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LUCKNOW UNIVERSITY STUDIES IN POLITICAL SCIENCE

# Political Theory and Modern Governments

BY

V. S. RAM, M. A., PH. D.

E. ASIRVATHAM, B. A., PH. D.

B. M. SHARMA, M. A., PH. D.

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## PART ONE POLITICAL THEORY

BY

EDDY ASIRVATHAM, B.A., B.D., PH. D.

Lecturer in Political Science in the University of Lucknow.

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## AUTHORS' NOTE.

This is the second number in the *Lucknow University Studies in Political Science*. It is the work of three teachers of the subject, of some years' experience. The Lucknow University is the earliest Indian University to teach Political Science as a separate subject of study for the B.A., Pass and Honours, and M.A. examinations. Those interested in the study of Political Science will find in this work, we trust, a thorough and at the same time concise treatment of the subject, covering as it does important fields of the history and theory of the State and a comparative study of the forms, structure and organization of modern constitutional governments. The authors are conscious of the many shortcomings that may be found in a comprehensive treatment of the subject. It is hoped, however, that such defects will be remedied in subsequent editions. The authors can justly claim that this is the first serious effort made by any Indian University to bring out a treatise of so important and comprehensive a nature. It is likely to be very opportune to legislators, students, teachers and all those who are interested in the evolution of the Indian Constitution. We hope to bring out a separate volume on the Government of India, in this series, when the new Constitution comes into operation.

The first volume of the present work is devoted to *Political Theory*, the second to *Constitutional Government and Unitary States*, while the third and the last deals with the *Theory of Federalism and Federations at Work*. We need hardly emphasize the utility of this last part when our own Federal Government begins to function, as there are important lessons to be drawn from other federations in existence.

The authors are deeply grateful to all the standard works on the subject, to which individual references have been made.

We shall feel amply justified in our labours if the book proves to be useful and stimulates others to bring out other aspects of the problems of Political Science. We are conscious of the printing errors which are a result of the speeding up of the publication ; and readers will kindly overlook them. Suggestions for improvements both in the manner and the method of presentation of the subject are invited and will be gratefully acknowledged.

The University,

Lucknow.

January 1, 1935.

THE AUTHORS.

## PREFACE.

This book has been written in the midst of many interruptions and under great pressure, with the consequence that there has been no opportunity to revise the book as a whole. Nevertheless, it is a fair representation of the views of the writer on social and political theory. Scrupulous care has been taken to weigh all the arguments that may be advanced for and against the various theories dealt with, and arrive at what seemed to be a balanced conclusion. There are several chapters in the book—e. g. chapters on Liberty, Property, Democracy, Citizenship, and Nationalism—which, it is hoped, will be of interest both to the general reader and the specialist.

Ample reference has been made in the body of the book to all the writers from whom help has been received. So there is no need to single out any of them for special mention.

It only remains to thank Miss R. C. Manchester, M. A. and Dr. D. Speer of Isabella Thoburn College, Lucknow and Mrs. M. G. Ballenger who have read different parts of the book in the Manuscript stage and offered valuable suggestions, as well as my colleague, Dr. B. M. Sharma, who has done most of the proof-reading.

E. ASIRVATHAM.

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PART ONE  
**POLITICAL THEORY,**



# **CHAPTER I**

## **THE NATURE, SCOPE AND METHODS OF POLITICAL SCIENCE**

Political science is the science of the State and of Government. It had its origin in the city-states of ancient Greece. The Oriental people had speculated on the State and its problems even before the time of the Greeks. But they did not develop political science in its pure and systematic form. It was mixed up with a great deal of mythology and superstition. Religion and polities were so closely intertwined that no attempt was made to develop an independent science of polities. The social sciences were treated as a branch of theology. The task of separating polities from religion, superstition, and mythology first fell to the lot of the Greeks. Thus it was that the Greeks were the first people to develop political science in its pure and systematic form. They were eminently fitted for this task by the rational and social outlook which characterised all their thinking.

### **TERMINOLOGY.**

A difficulty which confronts us at the very outset in undertaking a study of political science is with regard to the precise meaning of such terms as Politics, Political Science, Comparative Constitutional Governments, etc. We cannot hope to go very far in understanding problems pertaining to the State, unless we make clear to ourselves what these terms mean. Although political science has its

roots in the Greek past, it is in its modern form a comparatively new science. Consequently, it has not yet acquired a definite terminology of its own. In France and Germany, however, it seems to have attained a greater degree of perfection than in the Anglo-Saxon countries. *Staatswissenschaft* or the Study of the State in Germany and *Science Politique* in France have been studied and discussed in some detail for over half a century. The study of the State in England, however, seems to have begun in the Universities at any rate in the last quarter of the nineteenth century, when Sir John Seeley began his stimulating lectures on politics at Cambridge.

**1. Politics.**—Earlier writers on the subject simply use the term Politics in describing the entire science of the State. Aristotle's celebrated treatise has for its title the simple name politics. The term Politics is derived from the Greek words *Polis* or city state and *Politeia*. In the view of the Greeks, Politics embraces everything that touches the life of the State. Used in that sense it is the equivalent of Political Science. Writers of an earlier generation like Jellinek, Holtzendorff, and Sidgwick prefer the term Politics to "Political Science" which is in current use to-day. Among modern writers there is a distinct aversion to using the term "Politics" in its wide sense to cover a study of all the phenomena relating to the State and Government. Politics as ordinarily used to-day refers either—

- (1) To practical politics, as meaning "the art of controlling a party and securing the nomination and election or the appointment of particular persons to office" or
- (2) To the art of Government, the art of directing or guiding the policy of the Government towards a particular goal.

Sir Frederick Pollock, using the term Politics in its broad sense, divides it into Theoretical Politics and Practical or Applied Politics. Under the first head he includes.—

- (a) Theory of the State.
- (b) Theory of Government.
- (c) Theory of Legislation, and
- (d) Theory of the State as an artificial person.

Under the second division he includes—

- (a) The State (actual forms of Government).
- (b) Government (the working of Governments, Administration, etc.)
- (c) Laws and Legislation (Procedure, Courts, etc.), and (d) The State personified, (Diplomacy, Peace, War, and International dealings).

Theoretical politics “is concerned with the fundamental characteristics of the State, without particular reference to the activities of Government or the means by which the ends of the State are attained”\* Practical Polities, on the other hand, deals with “the actual working of Governments and the various institutions of political life”† It will no doubt be generally agreed that this is both a useful and convenient distinction, but many would prefer the term “Political Science” to “Polities” in the present context for the reasons stated earlier.

**2. Political Science** —The term “Political Science” in its current usage is much more comprehensive than the term “Polities”. It connotes the whole range of knowledge regarding the State and embraces the theory of the State. It includes both “Theoretical Politics” and “Practical” or “Applied Politics”. On the theoretical side, it is concerned with questions like the nature, origin, purpose and justification of the State and is known as the Theory of the State or Political Philosophy. On the practical side, it is concerned with the structure, functions, and forms of political institutions; and is known as Comparative Politics or Constitutional

\* Gilchrist, *Principles of Political Science*, page 2.

† Ibid.

Government. A succinct definition of Political Science is given by Paul Janet, a distinguished French writer, who says that Political Science is "that part of social science which treats of the foundations of the State and the principles of Government". According to Gettoll, an American writer, Political Science is "a historical investigation of what the State has been, an analytical study of what the state is, and a politico-ethical discussion of what the State should be"\*. Its leading sub-divisions, according to the same writer, are :

- (1) Historical Political Science:—the origin and development of political forms.
- (2) Political Theory:—a philosophical study of the fundamental concepts of the State.
- (3) Descriptive Political Science:—an analysis and description of the existing political forms.
- (4) Applied Political Science ;—the principles that should control the administration of political affairs ; the proper province and functions of government.

**3. Political Philosophy.**—This is another term which gives rise to confused thinking in studying the phenomena of the State. To some English political thinkers, political philosophy is the major portion of political science, political philosophy being that part of philosophy which deals with the State which is a part of the universe with which philosophy proper is concerned. This view is due to the belief that philosophy, being the unifier of all knowledge, should regard the study of the State as one of its subdivisions. We differ from this point of view, because the modern age of specialisation calls not so much for a synthesis of all knowledge as for an analysis of it. Progress in political thinking, just as much as in other fields of thought, calls for specialisation and delimitation of the various fields.

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\*Introduction to Political Science, p. 4.

The distinction between political science (*Staatswissenschaft*) and political theory or political philosophy (*Staatslehre* or *Staatsphilosophie*) is generally observed by Continental writers, though it is difficult to point to the exact line of demarcation. Political Science, as we use the term today, is broader in scope than political philosophy and carries with it a greater precision of meaning. "Political philosophy deals with the fundamental problems of the nature, of the State, citizenship, questions of duty and right, and political ideals"\*. It is "in a sense prior to Political Science; for the fundamental assumptions of the former are a basis to the latter".† Nevertheless, if political philosophy is not to become vague and imaginative, it must use the material supplied by political science. Political theory and objective political conditions act and react upon one another.

**4. Theory of the State.**—This term is in many ways preferable to the term political philosophy, although the subject matter of both is much the same. Political philosophy tends to suggest something abstract and speculative, but the theory of the State or political theory is much clearer and its boundaries are better marked. It is not a study of the structure of the forms of government nor a comparison of the various forms of government. These are dealt within that branch of political science known as comparative constitutional government. The theory of the State, likewise, is not a study of the historical development of the State or of law. Nor is it an attempt to discover the ideal state. Neither is it a study of the art of governing or of administration. It no doubt presupposes some knowledge of all these things as a necessary pre-requisite. But it is not concerned with the structure and activities of any one State. It deals with the essentials of all States and is based upon a study of the State both as it is and as it has been.

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\**Gilchrist*, p. 31.

†*Ibid.*

**Value of Political Thought.**—There is a disposition in some quarters today to minimise the value of a study of political theory as being an abstract and a barren subject. This underestimation is largely due to the habit of laughing at all theory, a habit which seems to be a feature of the matter-of-fact, mechanical, and industrialised society of today. We agree with Mr. Ivor Brown when he says that “Sensibly handled with a common-sense attitude to the real value of social life, it (political theory) is both a concrete and a fruitful study”.\*

In his *History of Political Thought*, Prof. Gettell carefully sums up the arguments for and against a study of political thought, which we shall run over as briefly as possible. It is often said that political theory has little relation to reality, that it cannot be applied in practice, that it deals with legal fictions and absolute concepts, that it is inexact, that it is incapable of giving definite answers to disputed questions, and that it is sometimes disastrous to actual politics. The opponents of political theory might very well use the aphorism of Emerson that there is “nothing new, nothing true, and nothing matters”.

To counteract the above charges, certain values of a study of political theory may be enumerated. It gives precision and definiteness to the meaning of political terms. It is conducive to clarity and honesty of thought. It is an aid to the interpretation of history. A knowledge of past political thought is an invaluable help in understanding present-day polities and international relations. Constructive political progress rests upon a sound and comprehensive political theory, applicable to present day conditions and needs. Political thought represents a high type of intellectual achievement. Finally, if governments can be shaped and improved by human ingenuity, no study is

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\**English Political Theory*, p. 1.

more valuable than a study of political theory. Political theory is thus intensely practical and intensely important. It is the abstract treatment of a concrete subject.

The charge that political theory is too far removed from actual conditions is not true. We need accurate definition and close analysis. Wise statesmanship requires more than mere hazy and often conflicting intuitions. It requires a sound philosophy, a scheme of moral values; and that is exactly what political theory endeavours to give. Statesmanship is essentially a moral task. That some political theorists have been mere pedants is no reason for condemning political theory wholesale. By its very nature, political theory cannot always give us clear-cut answers. While it may not lead to unity in political discussion, it will at least be an aid to mutual respect and toleration. If it is true that where there is practice, there should be theory also, a study of political theory is invaluable to political practice.

### **SCOPE OF POLITICAL SCIENCE.**

Prof. Goodnow claims that political science divides itself into three distinct parts, viz.

- (1) The expression of the State will ;
- (2) The content of the State will as expressed ;
- and (3) The execution of the State will.

The first division includes political theory and the network of extra-legal customs and extra-legal organisations which influence the political system of a country. The second is practically a synonym for law. The third deals with the ascertainment and application of the correct principles of administration.

### **RELATION OF POLITICAL SCIENCE TO ALLIED SCIENCES.**

Political science does not stand alone, since it is not the only science which deals with men in organised society.

Being one of the many sciences dealing with the relations of man to man, it has its close connections with other social sciences. Thus Paul Janet, the eminent French writer on political science, remarks that political science is "closely connected with political economy or the science of wealth; with law, either natural or positive, which occupies itself principally with the relations of citizens to one another; with history, which furnishes the facts of which it had need; with philosophy, and especially with morals, which gives to it a part of its principles".

**1. Political Science and History.**—These two sciences are very intimately connected. As Seeley puts it, "History without political science has no fruit. Political science without history has no root". To quote the same writer again, "Polities are vulgar when not liberalised by history, and history fades into mere literature when it loses sight of its relation to polities". History provides the raw material for political science. According to Seeley, political science and history will ultimately become identical with one another. But this seems improbable, if not impossible. Though both sciences are interdependent and mutually complementary, there are some fundamental differences between them.

- (a) *In their method of treatment.*—History being narrative deals with facts in their chronological order, whereas political science finds out such events only as relate to political evolution. The method of political science is reflective. Using the material provided by history, it seeks to discover general laws and principles.
- (b) *In scope.*—History is more comprehensive because it deals with the economic, religious, and military aspects of the social life whereas political science is not interested in them except in so far as they throw some light on the nature of the state and the development of political control.

(c) *In their end*.—History is much less philosophical than political science. History deals with concrete facts and political science deals with ideals and abstract types. Political science deals with the State as it ought to be, whereas history deals with the State as it is and has been.

The conclusion, then, is that political science must make use of history only to transcend it. The historian's task is not to pass moral judgments, but the political scientist is bound to make such judgments. It is there that political science joins hands with ethics and parts company with economics and sociology.

Lord Bryce claims that "political science stands midway between history and politics, between the past and the present. It has drawn its materials from the one, it has to apply them to the other".

**2. Political Science and Economics.**—Political science and economics are very closely related. They exert considerable influence on each other and cover a common ground to a large extent. Production and distribution of wealth are affected by the regulations of the State. All economic activity is carried on within the State on conditions laid down by the State through laws. Political movements on the other hand are profoundly influenced by economic causes. Our economic life is conditioned by political institutions and ideas. Some of the important questions of present day politics are at the same time questions which vitally concern economics—e. g. questions relating to tariff laws, labour legislation; government ownership, etc. The relation between the two sciences is so great that a century ago scientific writers regarded economics as a branch of political science, and the subject itself was described as political economy. As late as the eighteenth century, political economy was regarded as "a branch of Statesmanship".

Although the two sciences are so closely related there are still some fundamental differences between them. Commenting upon the question, Ivor Brown remarks that economics is concerned with things, while political science is concerned with people; one deals with prices and the other with values. If economics is concerned with people, it is not with people as ends in themselves, but only in relation to the things they make, sell, and use. Political science also takes things into account, but this it does only in relation to human or moral values. Thus it is that political science easily becomes a normative science while economics remains a descriptive science. As some one has humourously said, an economist is one who knows the price of every thing and the value of nothing.

**3. Political Science and Sociology.**—What philosophy is to the mental sciences, that sociology is to the social sciences. Both of them aim at an unification of the subject matter which belongs to the several allied subjects. Thus both of them possess an all-embracing character. Political science is narrower than sociology and is, in a general sense, a subdivision of sociology. Sociology is the fundamental social science. The field covered by sociology is so vast that present-day writers prefer to limit it to the study of certain phases of the life of society, other than for its political aspects.

(a) Sociology in its widest significance denotes a study of society in all its manifestations, while political science is only a study of the State and Government. Putting the same thing in other words, we may say that while sociology deals with man in all his social relations, political science deals with man in his political relations alone. This may not be true of the State in its early stages, but it is emphatically true of the modern State. In its early stages, the State was more a social than a political institution. In the words

of Gilchrist, "Sociology is the science of society; Political Science is the science of the State, or political society. Sociology studies man as a social being, and as political organisation is a special kind of social organisation, Political Science is a more specialised science than Sociology".

- (b) Sociology deals not only with organised communities but also with unorganised communities. The concern of political science is only the former. It deals only with societies which have received the impress of political organisation. Thus it is later in origin than sociology.
- (c) Sociology deals with the legal and coercive relationships of man with his fellows as well as with the evolution of customs, manners, religion, and economic life. Political science deals only with the former.
- (d) Unlike political science which treats only of the conscious activities of man, sociology treats of unconscious social activities as well.
- (e) Political science starts with the assumption that man is a political being. Sociology goes behind this assumption and seeks to explain how and why man became a political animal.
- (f) Sociology is concerned with what has happened or does happen, and not with what ought to happen. Political science, at least in one of its aspects, is concerned with what ought to be done.

**4. Political Science and Ethics.**—Political science is the science of the political order and ethics is the science of the moral order. Both have to deal with question of right and wrong. The relation between the two is so close that Plato considered politics a subdivision of ethics. The State, he believed, should train men in a life of virtue. The capital advance made by Aristotle upon Plato is said to be his

separation of ethics and politics. But this separation turns out to be one of methodology rather than of substance. Aristotle, too, posits a close relation between ethics and politics and allows political questions to be influenced by man's best moral judgment. The end of the State is, according to him, good life or a community of well-being. Machiavelli is the first writer of any note in the western world to separate politics from ethics. To him religion and morality are not the masters of the State, not even safe guides, but useful servants and agents.

The modern view is on the whole in favour of maintaining a close relation between ethics and political science. Lord Acton goes so far as to say "The great question is to discover, not what Governments prescribe, but what they ought to prescribe." Another writer holds that to separate ethics and politics is disastrous to both. Politics divorced from ethics rests on a foundation of shifting sand; ethics divided from politics is narrow and abstract. Ivor Brown maintains that the difference between politics and ethics is one of quantity, not of quality; for "politics is but ethics writ large." He goes on to say, "Ethical theory is incomplete without political theory, because man is an associated creature and cannot live fully in isolation; political theory is idle without ethical theory, because its study and its results depend fundamentally on our scheme of moral values, our conceptions of right and wrong."

The ultimate justification of the State is determined by the moral end or purpose which the State serves. Thus the ideals of both ethics and political science must be in agreement. Yet the bulk of the material with which the two sciences deal is distinct. Catlin contends that from ethics the Statesman may learn which courses among several are desirable and from political science may learn which among several may be feasible.

**5. Political Science and Psychology.**—Psychology, as we know it to-day, is a comparatively new science, and its advocates are trying to apply psychological methods to every part of man's individual and social life. E. Barker aptly remarks "The application of the psychological clue to the riddles of human activity has indeed become the fashion of the day. If our fathers thought biologically, we think psychologically." There can be little doubt that the psychological approach to politics, upon which much insistence is placed these days, is very valuable. It may be that politics has been too long under the sway of philosophy and has not given enough attention to the facts of human behaviour. We need "to reinvigorate our minds from the wells of direct observation." We cannot go very far in our study of political science without understanding the way in which human beings behave as individuals and as members of society when subjected to various kinds of stimuli. We need to study such factors as habit and instinct, imitation and suggestion, if we are to understand human behaviour aright. "Government to be stable and really popular must reflect and express the mental ideas and moral sentiments of those who are subject to its authority; in short, it must be in harmony with what Le Bon calls the mental constitution of the race."\*

At the same time it is necessary to remember that it is easy to exaggerate the importance of psychology to political science. E. Barker, in his *Political Thought in England from Spencer to Today*, clearly brings out the limitations of the psychological method as follows:—

- (1) The psychologist does not and cannot deal in terms of value. Values belong to the moralist. Psychology deals with things as they are; ethics with things as they ought to be. Therefore political theory

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\*Garner.

should look to ethics and not to psychology for constructive help.

- (2) Psychology seeks to explain civilized life in terms of savage instinct—the higher by the lower. This does not seem to be the correct evolutionary method. The right procedure would be to explain the lower by the higher. Man explains the monkey, and not monkey the man. It is illogical to explain civilized life by the conditions of life in pre-historic times. Reason is more the less reason when it is not conscious inference. Habit and instinct, suggestion and imitation exist, but they exist in connection with intelligence.
- (3) A well known psychologist like McDougall gives a full account of the origin of instincts that act *in* society, but he hardly shows how they issue *into* society. "He seems to do a great deal of packing in preparation for a journey on which he never starts".
- (4) According to Catlin, psychology is concerned with mental acts which must be considered in relation to the observable, individual mind. Politics is concerned with the impulsive or willed relations as such of social beings.

**6. Political Science and Law.**—The state is both a social phenomenon of a legal institution and any attempt to explain the state in its entirety must include both these points of view. From the legal standpoint, the state is a person in the sense that it is a subject of rights and duties. It can sue and be sued at a law court. Or, to put it in the form of a definition, it is "a corporation composed of men domiciled upon a particular territory and endowed with original ruling power".†

Jurisprudence may be defined as the science of law. Although strictly speaking a subdivision of political science,

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†Elliott.

it is studied as a separate branch of study owing to the vastness of its scope and its technical nature.

Constitutional law defines the organs of the state, their relations to one another, and the relations of the state to the individual. International law regulates the relations of states to one another.

**7. Political Science and Geography.**—Man is to a considerable extent influenced by his physical environment and the geographical conditions under which he lives. It is easy to exaggerate the influence of the climate, topography, and physical features of a country upon the character, institutions, and accomplishments of a people. While these external factors play an important part in man's life, it is necessary to remember that civilised man is not a mere passive tool of Nature. Like the lower animals, he does not blindly allow himself to be adopted to nature. By the use of intelligence and forethought he adopts nature to his purposes.

Aristotle was one of the earliest writers to give attention to the influence of geography upon the political institutions and the national character of a people. Among modern writers Bodin in the sixteenth century gave close attention to this subject. After him Rousseau worked out a correlation between climate and forms of Government. He held that despotism was most natural for warm climates, barbarism for cold climates, and good policy for moderate climates. He held also that the best form of Government for small countries was democracy and for large countries, monarchy.

In the middle of the last century Thomas Buckle in his "*History of Civilisation*" overworked the relation between physical environment and national character, contending strongly that geographical influences were the most important factor in moulding the character and institutions of peoples. He gave particular attention to the influence of climate, food, soil, and the "general aspect of nature". His extreme position is not shared by many today.

After making due allowance for exaggeration, it remains undoubtedly true that geographical conditions have influenced in considerable measure the determination of national policies and to some extent the character of political institutions".\* At the same time, we are safe in saying that geography is a much less important factor in moulding social and political institutions today than in earlier times.

### METHODS OF POLITICAL SCIENCE.

It is admitted by all writers that political science is an inexact science. It does not aim at absolute truth. It aims at relative truth. Consequently there is bound to be difference of opinion with regard to almost all political questions. What is sound politically today may not be sound a hundred years hence. No theory of the State can be considered as ultimate truth.

Because of these limitations and difficulties, some thinkers even refuse to give the name "science" to a study of political theory. It is true that political science is not exact like mathematics, physics or chemistry. Two plus two makes four everywhere in the world, except in a lunatic asylum. Two parts of hydrogen and one part of oxygen produce water wherever they are brought together. These are universal and unvarying laws. But such laws we do not find in studying social sciences owing to the instability of human behaviour. It is difficult, if not impossible, to draw precise conclusions from political phenomena or to make exact forecasts about the future. Still by a close and prolonged observation of political phenomena, we can arrive at general laws and principles which can be of real help to us in solving the practical problems of government.

We cannot experiment with human society or the political order in the way in which a scientist can experiment with physical or chemical substances. We cannot at will introduce democracy in one State and aristocracy in another in order to

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\*Garner, pages 42-43.

study the effects of these respective forms of government. Physical phenomena and social phenomena differ fundamentally. Nevertheless, every law passed is an experiment, and a careful student can arrive at general conclusions based on particular phenomena. A study of political theory, thus, does not enable us to reach conclusions with mathematical precision. However, it can help us to get at probable truths, and "probability" as Samuel Butler remarks, "is the guide of life". "Prediction in physics may be certain; in politics it can at best be no more than probable".\*

A great many modern thinkers have given their thought and attention to the methods by which political phenomena can be collected and classified, with a view to reaching practical results. According to Augustus Comte, the principal methods are *observation*, *experiment*, and *comparison*. Bluntschli holds that the true methods are philosophical and historical. To a great many among present-day thinkers, inductive and pragmatic methods are more sure to lead to positive results in political science than deductive and dogmatic methods. The methods which are generally favoured by them are—

- (1) The experimental method,
- (2) The historical method,
- (3) The comparative method,
- (4) The method of observation,

and (5) The philosophical method.

The first four of these methods have a great deal of similarity and so can be easily bracketed together. The fifth method belongs to a category of its own. A combination of these two types of methods alone can lead to valuable results. The inductive and deductive methods are complementary to one another.

**1. The Experimental Method.**—As seen already, there is not much room for conscious experimentation in a field

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\* Bryce.

where we have to deal with human beings. Human motives and human values cannot be weighed and tabulated like a chemical substance. Nevertheless every law passed, every new policy enunciated, and every political system instituted is an experiment in government, and by a study of such experiments the political scientist can reach positive conclusions. It is his task to take note of the political experiments and happenings that go on around him all the time and make his deductions. Governments all the time try experiments on the community. History is experimentation on a very vast scale.

In the modern world, we do not rely on mere unconscious experimentation. We make conscious political experiments, in the light of past experience, when and where circumstances permit. Witness, for example, the grant of responsible self-government to Canada based on the Durham Report of 1839 and the constitutional reforms granted to India or in the process of being granted. Thus there is a definite and distinct place for the experimental method in political science.

**2. The Historical Method.**—This may be regarded as a form of the experimental method. A proper study of history is an invaluable aid to the student of political science. It is a corrective to hasty and one-sided conclusions in politics. The value of studying the origin, growth and development of political institutions is that from such a study we can draw conclusions for future guidance. History not only explains the past, but also contains the key for interpreting the future.

The historical method is mainly inductive in character. It is based on observation and study of historical facts. Its chief limitation is that it cannot, and does not, deal in values. So it has to be supplemented by the philosophical or ethical method which looks to ultimate ends and values. Yet indirectly the historical method does enable us to judge the goodness or badness of actions.

In using the historical method, there are certain precautions that the student will do well to take—

- (a) He should guard himself against superficial resemblances and parallels.
- (b) He should not let the present and the future be determined solely by the past. The historical method should not become a synonym for hide-bound conservatism. Just because a thing has been thus and so in the past, it does not follow that it should be thus and so at present.
- (c) He should avoid the temptation to make history support his preconceived notions. And to do that he should be altogether objective or scientific in his outlook.
- (d) He should remember that the oft-quoted saying that history repeats itself is only a half-truth. The other half-truth is that history never repeats itself. Historical conditions never exactly reproduce themselves. “One cannot step twice into the same river.”\*

**3. The Comparative Method.**—This method supplements the historical method. It goes back to the time of Aristotle and has been used effectively in modern times by De Tocqueville, Bryce, and others. Study of history is useless if we cannot make valid comparisons. The comparative method helps us to relate events, to establish cause and effect, and to arrive at general principles. It gathers together the multiplicity of phenomena, arranges them in order, and selects the elements common to them.

If this method is to be usefully employed, we must take into account not only resemblances but also differences. We are not to be in a hurry to come to conclusions. The phenomena from which the common elements are to be selected must not

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\*Heraclitus quoted by Bryce.

be too different in character. Comparisons must not be pushed too far and analogies must not be far-fetched. Generalizations of a vague and broad character should be avoided. It is profitable on the whole to confine our investigations to the states which have sprung from a common historical background and which are relatively near together in point of time.

\* A particular form of the comparative method is the analogical method. It is very useful in political science, provided analogy is not pushed to the limit of identity. To establish an analogy between two things is not to establish their identity. Analogy is not proof. It can give us probability, but not certainty.

**4. The Method of Observation.**—Like the foregoing methods, it is an inductive method. It was followed by Lord Bryce to a very great extent. It rests upon an observation of the actual working of political institutions at close range. Before undertaking his monumental works, the *American Commonwealth* and *Modern Democracies*, Lord Bryce visited the countries concerned and based his conclusions upon personal conversations with public men and the observations of governments at work. A method like this, based as it is on direct observation and reflection, has much to commend it. It is practical and concrete and has a refreshing sense of reality about it. It is in living touch with facts and is free from the charge of being abstract and doctrinaire. Nevertheless, it is a method which has to be used with caution. When the facts are very many and often conflicting, only a man with a trained eye and mature judgment can arrive at sound conclusions. One must have the ability to sift evidence and rightly interpret one's data. There is a danger of seeing the things that one wants to see and leaving out those things of which one chooses to be oblivious. Likewise, there is a danger of missing the wood for the trees. The first desideratum is no doubt to get at facts. But facts are of little use

in and by themselves. We need a penetrating and understanding mind to interpret them aright and make them real and living.

**5. The Philosophical Method.**—Unlike the foregoing methods, this method is of a deductive or *a priori* kind. Its chief exponents are Rousseau, Mill, and Sidgwick. On philosophical and ethical grounds, it first determines the nature and end or purpose of the State and then casts about for the best forms of political institutions for the realisation of this end. It begins with abstract concepts, and then attempts to harmonise them with the actual facts of history. The chief danger of this method is that it may easily become imaginative and visionary, as seen in More's Utopia and, to some extent, in Plato's Republic. It may not have any basis whatever in historical facts and may thus sink into mere ideology. Attempts to construct an ideal type of State have engaged the attention of thinkers from the days of Greek philosophy, through the scholasticism of the Middle Ages down to the present day.

*Conclusion.*—The careful students would seek to combine the historical and philosophical methods. He would test and correct his deductive principles by the actual facts of human experience and interpret the facts of life in the light of abstract or *a priori* principles. While his feet stand four-square on solid facts, his head would soar high into the skies. He would seek to bring about a happy blend of realism and idealism. He would have no use for that type of realism which does not seek much beyond one's own nose, nor for that type of idealism which loses itself in the clouds. He would follow the footsteps of men like Aristotle and Burke who combine in their writings the historical and philosophical methods.

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## SELECT HEADINGS.

Barker—*Political Thought in England from Spencer to To-day*,—CHS. 5 AND 6.

Barnes—*Sociology and Political Theory*,—CH. 2.

Brown, Ivor—*English Political Theory*,—CH. 1.

Catlin—*The Science and Method of Politics*,—CHS. 1-3.

Garner—*Political Science and Government*,—CHS. 1-3.

Gettell—*Introduction to Political Science*,—CH. 1.

Gettell—*Readings in Political Science*,—INTRODUCTION.

Gilchrist—*Principles of Political Science*,—CH. 1.

Pollock—*Introduction to the History of the Science of Politics*,—CH. 1.

Sidgwick—*Elements of Politics*,—CH. 1.

Seeley—*Introduction to Political Science*,—LECTURES 1 AND 2.

Merriam—*New Aspects of Politics*,—CHS. 3-4.

Leacock—*Elements of Political Science*,—PP. 3-12.

Willoughby—*The Nature of the State*,—CH. 1.

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## CHAPTER II

### THE NATURE OF THE STATE

The State is the most universal and most powerful of all social institutions. Wherever human beings have lived together for any length of time, there we find organization and authority. And where we find organization and authority, there we have the nucleus of the State. The only outstanding example of a people who form a society but do not constitute a State is that of the Eskimos.

As the Greek writers have taught us to think, the State is both a natural and a necessary institution. Headache may be natural, but is not necessary! The State is natural in the sense that it has arisen out of the primary instincts of man and is a gradual growth. Aristotle declares that man by nature is a political being. The development of the original family according to him meant a village, and when many villages joined together there came into being the city or State. Each city is a "work of Nature". To Aristotle, to live in the State and to be a man were identical, for whoever was not a member of the State was either a God or a beast; he was either above the State or below it. Modern writers sometimes speak of the political instinct of man. By that they mean that the State has its roots in the natural impulses of man and that it cannot be easily eradicated. The State grows, is permanent, and reappears when it is destroyed. If it is claimed that the State is not natural in the sense in which the family is natural and that it is the artificialisation of some human need, our answer is that "it is natural for human

beings to be artificial".\* But our contention is that the State is not an artificial creation. We are born into the State. We do not ordinarily choose it and cannot, of right, claim dissociation from it. Spencer is mistaken when he says that the individual has a "right to ignore the State".

The State is necessary for man's growth and development. Without it man cannot reach the height of his perfection. Aristotle holds that the State first came into being in order that we might live, but is continual in order that we may live happily. In his own words "the State comes into existence originating in the bare needs of life, and continuing in existence for the sake of a good life". In other words, satisfaction of economic wants is the chief reason why the State first came into being. But its continuance lies in the fact that it is indispensable to good life, i.e. to a life of happiness and nobility. Aristotle's teacher, Plato, finds the necessity for the State in the fact that no man is sufficient unto himself. The need of man for social co-operation and social endeavour, at a certain stage of development, expresses itself in the State.

- The State, we have said, is the most universal and most powerful of all social institutions, and is natural and necessary. What then is the State?

**1. The State and Society.**—The State is not identical with society. To the early Greek thinkers the State was indistinguishable from society. This identification of the State with society is to be explained by the peculiar circumstances that prevailed in the Greek city-states. The city-state was small in size and compact in population. The citizens knew one another personally and met together in common assemblies to pass laws and choose Magistrates. They were knit together by common interests. The problems with which they were faced were simple in character. Under

\*W. E. Hocking.

these circumstances it was natural for the Greeks to consider the city as including the whole life of man. "She is ours and we are hers" was the characteristic attitude of the Greek towards his city or State. The city performed multifarious functions. It was the State, the Church, and the School, all in one. The social life was, to the Greek, a life of citizenship.

Whatever justification the Greeks may have had for the identification of the State with society, we today have no such justification. Interpreted strictly, the state is a political organization. It is society politically organised. Society is both broader and narrower than the State. It may be used to describe the whole community of mankind just as much as a small social group of a village. In its broader sense, "it transcends the individual state and crosses state boundaries without regard to their existence," *e. g.*, the Islamic Society and the Free Mason Brotherhood.

The State is a part of society, but is not a form of society. It is more than a number of loosely connected individuals who happen to live together. It is a number of people associated together politically, organized under and through some form of Government, occupying a definite portion of the earth's surface. Society exercises authority largely through customs. The State exercises authority through laws enacted and enforced by Government. The State is the only instrument which can legitimately use force. Society can only use moral persuasion or influence and social ostracism or expulsion. It cannot imprison a man for the violation of its requirements. To use the language of E. Barker, 'the area of society is voluntary co-operation, its energy that of good-will, its method that of elasticity; while the area of the State is rather that of mechanical action, its energy force, its method rigidity. In the words of Mac Iver "the State is a structure not coeval and co-extensive with society but built within it as a determinate

order for the attainment of specific ends".\* The importance of the State to society is clearly brought out by E. Barker when he says "Society is held together by the State; and if it were not thus held together, it could not exist".†

**2. The State and Government.**—In our ordinary conversation we use the two terms interchangeably. Yet a moment's reflection is enough to show us that they are not one and the same. Government is the instrument of the State. In the words of Rousseau, it is "a living tool". It is the practical organization of the State through which the will of the State is expressed and realised. The ends and purposes of the State are executed through the instrumentality of the Government. Without the Government the State has no existence. The State is largely an abstraction, but Government is concrete. The State is permanent and fixed while Governments are transitory. Changes in the form of Government do not mean changes in the continuity of the State.

The principal ways by which the State may cease to exist are:

- (1) Conquest followed by incorporation.
- (2) Voluntary choice.
- (3) Destruction of the land or the people of a State.

Examples of these are:

- (1) The incorporation of the kingdom of Hanover into Prussia after its conquest in 1866.
- (2) Union of the small States of Italy into the Kingdom of Italy.
- (3) The threat of William of Orange that he would cut the dykes of Netherlands and destroy the country rather than see it conquered by the Spaniards.

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\*The Modern State, page 40.

†Political Thought in England from Spencer to Today, pp. 118-19.

The authority of the Government is not original. It is derived from the State. The functions of any Government are executive, legislative, and judicial.

**3. The State, Nation, and Nationality.**—In political science these terms have often been used as synonymous terms. Even today political thinkers in general do not make a careful distinction between Nation and Nationality. For the sake of clarity of meaning and precision in the use of words, it is wise to employ these terms to describe distinct things. The State, as we have already seen, is a political organization. It may or may not be co-existent with Nationality. Where a State is exclusively composed (or nearly so) of one nationality we get a nation-State. But where we have a State which consists of more than one nationality, or where a nationality is spread over several States, the State and nation do not coincide. Switzerland is a good example of the first alternative and the Jews of the second. Nation means a self-governing nationality. Or, as Gilechrist puts it, a nation equals State plus nationality. The same writer goes on to say that the term nation to-day has acquired a definitely political meaning. "It stands for the unity of the people organized in one state and acting spontaneously as a unity". Nationality is primarily a cultural and ethnical term. It is a spiritual sentiment or principle. What makes a people a nationality are factors like geographical unity, common racial stock, common culture, common language, religion, customs and traditions, common history, common economic interests and political associations, common hopes and aspirations, etc. It is not necessary that every one of these factors should be present in order that a people may become a nationality. Still without at least some of these factors nationality is unimaginable. On the political side, nationality is defined as the disposition to act together politically.

Since the early part of the nineteenth century, there has been a growing feeling that every group of people who claim

to be a nationality should be allowed to have an independent political organization. This movement received an impetus in the World War and expressed itself in such potent ideas as the "self-determination of Nations" and "one nation, one state"\*. Whether this is the goal towards which political progress should be directed is a question which will claim our attention later on.

The distinction that we have drawn between a "nation" and a "nationality" is not the one which is usually drawn. Garner remarks "In general, we may say that a nation is a population of one race and language, inhabiting the same territory and constituting the larger part of its population; while a nationality is usually one of several distinct ethnic groups scattered over the state and constituting but a comparatively small part of its whole population. Thus the English population in the United Kingdom constitutes a nation, while the Celtic element constitutes a nationality".

Gettell observes "Considerable confusion arises from the fact that publicists do not agree in their usage of the terms 'nation' and 'nationality'. Some use the term 'nation' to mean a population of ethnic unity, regardless of its political affiliation; others widen the term to mean a population having also political unity and identify 'nation' and 'state'. Some use the term 'nationality' to signify the principle or characteristic that creates a nation. Others distinguish nation and nationality by using the former to mean a population of the same race, language and tradition, inhabiting the same territory and constituting the larger part of its population and the latter to mean one of several distinct ethnic groups scattered over an area and forming but a comparatively small part of its population."†

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\*The term nation is here used in the sense of nationality.

†Introduction to Political Science, p. 47. ".

‡Problems of Political Evolution, p. 159.

**One-sided or False Views of the State.** There is scarcely any term in political science which has given rise to more confused thinking than the primary term "State". Practically every writer on political science gives his own definition of the "State", and there are hardly any two thinkers who agree on what they consider to be a satisfactory definition of the "State". MacIver in his *Modern State* sums up views of the State which are either narrow and one-sided or altogether false.

- (1) According to writers like Oppenheimer, the author of "*The State*", the State is essentially a class-structure, "an organization of one class dominating over the other classes". It is needless to say that this is a caricature of the State rather than a correct view of it. It is in line with the teaching of Karl Marx, according to whom the modern state is an agency for the exploitation of the poor by the rich. As a definition of the State, Oppenheimer's definition may be true of certain states at certain times, but we object to making it apply to all states at all times. It applies more to a diseased State than to a normal one. In a normal or well-ordered State individual or class interests are duly subordinated to the general interest or common good.
- (2) Some interpret the State as a power-system. They interpret it exclusively in terms of might. Machiavelli is the forerunner of this point of view. Professor T. N. Carver holds that the State is force and nothing but force. Many German writers upheld the same view during the war. We totally disagree with this view. Force is no doubt an essential part of the State, but is not the foundation of the State. Might never makes anything right. It is right which can lend support to might. When used in the interest of right, might may be justifiable.

T. H. Green aptly remarks "will, not force, is the basis of the state". Force is the distinguishing mark of the State. But the reason why we as enlightened citizens obey a well-ordered State is that we are conscious that in obeying the State, we obey the best in ourselves, we obey our own individual wills purged and purified of their selfishness.

- (3) To thinkers like Grotius and Althusius, the State is a welfare-system. It is not in the nature of a public utilities company. We have no hesitation in saying that this is too narrow a view of the State. Promotion of public welfare is undoubtedly a very important duty of the state. But to identify the State with a public utility company like, *c. g.* the U. P. Electric Supply Company, is clearly a mistake. The State is not like a company at all. Membership in it is not voluntary. We are born members of the State. We cannot enter the State when we like and leave it when we like. Further the view of the State under consideration ignores the fact that besides being a welfare-system, the State has a life, will, and personality of its own, which in some ways, are different from the life, will, and personality of the individual members comprising it.
- (4) Some interpret the State as entirely a legal construction. To them the State is a community "organized for action under legal rules". Once again, we would say that this is a very narrow view of the State. There is no doubt whatever that the legal aspect of the State is a very important aspect, but it is not the only aspect. The State guarantees to its citizens rights and enforces duties. But that does not exhaust the nature or functions of the State. The legal view of the state ignores the higher life of the State altogether. The State, says Hegel,

is the "world the spirit has made for itself". Miss Follett in her "*New State*" remarks "The home of my soul is in the State". The State is, to our way of thinking, as much of a spiritual entity as a legal construction.

(5) There are a few writers, whose number is happily diminishing today, to whom the State is in the nature of a mutual insurance society for purposes of mutual protection. Herbert Spencer was a staunch advocate of this theory. To him, the State is "a joint stock protection company". We have already seen that the State cannot be compared to a company. Much less can it be compared to an insurance company. Views like this do scant justice to the organic nature of the State, according to which, individual good and social good are intimately related and are not two clearly separable entities. If mutual protection is the only purpose for which the State exists, what is there to deny the name "State" to a group of brigands who band themselves together against the rest of society? Any self-defence group would be entitled to describe itself as a State.

(6) The individualists consider the State as a necessary evil. They regard every action of the State as a subtraction from the freedom of the individual. Hence, they say, the State is an evil, although it is rendered necessary by the selfishness and rapacity of man. If each individual were left to himself, they argue, he would seek his own self-aggrandizement at the expense of others and there would be no social peace and no social order. The State thus becomes a concession to human weakness. Spencer and even such an enlightened thinker as Bentham uphold this point of view. As for ourselves, we

believe that it is a mistake to consider the State an evil, or even a necessary evil. We agree with the idealists when they say that the State is a positive good. It is man's truest friend, for the fullest and freest development of human personality is impossible without the instrumentality of the State.

- (7) The mild anarchists modify the position of the individualists to the extent of holding that the State is an evil, but that some day it will be unnecessary. They rely much upon the changeability of human nature, believing that with the increasing moral development of man the State will become less and less necessary and will eventually "wither away". The extreme anarchists hold that the State is an unmitigated evil, and, therefore, the sooner we get rid of it the better for the moral growth of man. While there is much that is admirable in the anarchist position, we must admit that it does scant justice to the fact that the State has its roots in human nature. The anarchist has to persuade our instincts as well as our reason that the State is an evil which carries with it no compensating factor. A contention which we shall attempt to establish in a later chapter, is that obedience to authority is natural and that authority and liberty are complementary, and not anti-thetical to one another.
- (8) Some modern writers prefer to regard the State as one in the order of "corporations". This is the pluralistic point of view. According to this view, the State is to be reduced to a position of equality with other permanent groups like the family, the church, the trade union, the social club, etc. which cater to our varied interests. We refuse to accept this view because of our conviction that the State is unique in its character. It is the only one of its

kind. It is in a class by itself. It is an all-inclusive association, an association *par excellence*. By saying all this, we do not mean to suggest that we are prepared to accept the orthodox monistic point of view *in toto*. We realise that the time has come for us to recognise that the various permanent groups within society have a definite and distinct place to fill in the life of man and that, in order to do this satisfactorily, they should have as large a degree of internal autonomy as possible. Nevertheless, we need a superior organization to adjust relationships and to keep the various subordinate organizations in their proper places. That organization is the State.

## A POSITIVE STATEMENT OF THE STATE.

**1. Priority of the State.**—The State is the highest form of human association. Without it man's life is incomplete. It provides the environment for the self-realisation and self-development of the individual. As Aristotle holds, the State and household differ, not in degree, but in kind. The household exists for satisfying the physical needs of life, the State for the moral and intellectual needs. The notion of a city (or State) says Aristotle naturally precedes that of a family or an individual, for the whole must necessarily be prior to the parts. The State is thus prior to the individual. There is a natural impulse for men to associate with each other. It is by the completion of civil society that man is the most excellent of all living beings. Without law and justice man would be the worst of all beings. Only in the State does the individual really become a man. Without the State he might be potentially a man, but would be actually a brute.

**2. The State as Will and Mind.**—Thus the State, as an idea, is prior to man. This does not mean that the end of the State is something apart from, or contrary to, the end of the

individual. Properly understood, the end of both is the same, viz. the development of human personality. In view of what has been said earlier, it is clear that this development is impossible in isolation. No man is sufficient to himself. The family, social organization of one kind or another, and the State testify to this fact. As Lord puts it, "the State is an essentially necessary aspect of, or element in, the individual's own will". It is partly an external organization fulfilling the most universal and permanent needs of human personality and partly the individual himself in a different capacity. It is the extension and completion of the moral and rational will of the individual. It is a rational organization of the various interests and purposes of the individual.

**3. The State as Force.**—In one aspect, then, the State is the individual's mind. In another, "it is his body and force".\* It completes the bodily force of its citizens. Physical coercion is an indispensable element in the constitution of the State. In the last analysis the State must have power to coerce the unsociable and recalcitrant will. The State interprets the individual to himself. Force used by the State is an effective means of freeing the individual from the low level of existence which he tends to reach in his ordinary and unreflecting moments to a higher level of existence where he is enabled to see his individual good as an intrinsic part of the common social good.

**4. The Uniqueness of the State.**—The State is the one organization that transcends class and stands for the whole community. None of the other associations social, religious, political, economic, educational, etc. can include the whole of the individual. In the striking words of Miss Follett, the author of *The New State*, "The State cannot be composed of groups, because no group, nor any number of groups, can contain the whole of me and the ideal State demands the whole

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\*Lord.

of me". Again, " the true State must gather up every interest within itself. It must take over many loyalties and find how it can make them one. I have all these different allegiances. I should indeed lead a divided and, therefore, uninteresting life if I could not unify them. The true State has my devotion, because it gathers up into itself the various sides of me, is the symbol of my multiple self, is my multiple self brought to significance, to self realisation. If you leave me with my plural selves you leave me in desolate places, my soul craving its meaning and its home. The home of my soul is in the State".

**5. The State as an Adjuster of Relationships.**—A corollary which follows from the above view of the State is that we require a supreme organization, viz. the State, to adjust the "outstanding external relationships of man in society". Life becomes a chaos without the State. It is the State which reconciles differences and gives unity and meaning to the many-sided life of man. In a complex and complicated world where there is an evergrowing conflict of loyalties, there is an urgent and increasing need for the State as an adjuster of relationships. It is the business of the State to keep the family, the church, the trade union, the social club, etc. in their proper places and to see that nothing is done to disturb the harmony of society.

**6. The State and Universal Interests.**—The State can concern itself only with those interests of man which can reasonably be regarded as universal. It cannot undertake the promotion of the sectional or class interests of its members. For this latter purpose, we have organizations like the family, the church, the trade union, and the cultural organization. As *Garner* puts it, while "the purpose of a voluntary association is limited to the pursuit of one, or at most, a few particular interests", the State is charged with the care of general rather than particular interests.†

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† Political Science and Government, p. 63.

**7. The State and Morality.**—Finally the State can regulate only the outer aspects of conduct. It cannot take motives into account, since they are altogether of an inner character. The State may consider intentions, but motives fall outside its scope. When we consider intentions, we are concerned with the question as to whether a given act was purposeful or only accidental. But when we consider motives, we are concerned with the inward and moral nature of the question in hand. Although the State is a moral and spiritual institution and is an extension of the personality of the individual, the instruments at its disposal are of such an external character (force) that it can deal only with outer conduct and intentions, but not with motives. From this it follows that the State cannot enforce or promote morality directly. It can only make it possible for the individual to earn his own morality. T. H. Green rightly says " the only acts which it (the state) ought to enjoin or forbid are those of which the doing or not doing, *from whatever motive*, is necessary to the moral end of society ". In simpler language, it means that the State ought to undertake only those actions which are so absolutely indispensable to the good life of society that in enforcing them it can take the risk that some people will perform, or refrain from, them from a low and unworthy motive.

### ESSENTIAL ELEMENTS OF THE STATE.

The essential elements of the State are population, territory, sovereignty, and government.

**1. Population.**—It is obvious that there can be no State unless people live together an associated life. The question relating to the number of persons necessary to constitute a State is only of theoretical interest, although ancient writers laid much stress on it. Plato in his "*Laws*" fixed the number of citizens for an ideal state at 5040. Aristotle considered 100,000 too many. In recent times, Rousseau who was an

ardent admirer of the Greek city-state life wanted to revive the ancient city-state with a compact population. He thought that 10,000 would be an ideal number. Modern states vary in size and population as widely as the British Empire, Russia, and China on the one hand, and Monaco and San Marino on the other.

From the legal point of view, population as an element of the State includes both those who rule and those who are ruled. The people of a State have a dual character. In the capacity of those who have a share in framing the will of the State, they are citizens ; and in the capacity of those who obey the will thus formed they are subjects. This distinction we owe to Rousseau. Even in a non-democratic State, this truth holds good for “ the absolute monarch, for example, is only an agent for the expression of the will of the State ”. As citizens, people possess rights and as subjects they have duties.

**2. Territory.**—There can be little doubt that without a fixed territory there can be no State. Yet not all political thinkers are absolutely agreed on it. The Modern State undoubtedly requires a definite portion of earth's territory over which it can have undisputed authority. In contrast with the ancient State, the modern State is essentially territorial in character. A nomadic people cannot be said to constitute a State, although they may have some form of political organization through common subjection to a leader or chief. In the words of Prof. Elliott “Territorial sovereignty or the superiority of the State over all within its boundaries and complete freedom from external control, has been a fundamental principle of the modern State life”.

A fixed territory is so much an essential factor of the modern State that no two separate and unrelated States can claim jurisdiction over the same area. The only apparent exception is that of the federal State, where two “ States ” exercise authority over the same territory. But it should be remembered that “they are related states” and that “the sphere of

each is carefully determined by the provisions of the written constitution".\*

**3. Sovereignty.**—Sovereignty and law are the two distinguishing characteristics of the State. By sovereignty we mean ultimate authority, an authority from which there is no appeal. Associations other than the State may have population, territory, and even some form of governmental organization, but they have no sovereignty. In the last resort, all individuals and groups of individuals within the State have to submit to the will of the State. This fact we express by the term internal sovereignty. In external relations, too, the modern State claims final authority. It may obey international conventions and understandings, but there is no power on earth which can compel such obedience. This attribute of the State we express by the term external sovereignty. By virtue of its sovereign authority the modern State claims supremacy in internal matters and freedom from the control of external governments.

The orthodox view of sovereignty, as found in Hobbes, Bentham, and Austin is expressed by Lewis when he says "The sovereign has the complete disposal of the life, rights and duties of every member of the community". Mac Iver and many other modern writers dissent from this view. To Mac Iver, the State is an association, unique in its kind and of invaluable significance but still an association, like the rest. We shall take up a criticism of this view in a later chapter.

**4. Government.**—As seen already, government is the political organization of the State. It is the instrumentality through which the sovereign will of the State finds concrete expression. If the ultimate sovereign in a democratic country is the people, the legislative sovereign is the government. A State without government is inconceivable, for the State wills and acts through the government. No particular form of

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\*Elliott.

government is essential. The form of government depends upon the nature of the State which in turn depends largely upon the political thought and character of the people.

**Definitions of the State.**—A great number and variety of definitions of the State have been given. We shall give only some of the most satisfactory. Holland defines the State as a “numerous assemblage of human beings, generally occupying a certain territory, among whom the will of the majority or of an ascertainable class of persons is by the strength of such a majority made to prevail against any of their number who oppose it”. Phillimore, looking at the State from the point of view of international law, defines it as “a people permanently occupying a fixed territory, bound together by common laws, habits, and customs into one body politic, exercising through the medium of an organized government independent sovereignty and control over all persons and things within its boundaries, capable of making war and peace and of entering into all international relations with the communities of the globe”.

Burgess defines the State as “a particular portion of mankind viewed as an organized unit”. This definition is substantially the same as that given by Bluntschli to whom “The State is the politically organized people of a definite territory”. Wilson’s definition is both short and simple. To him the State “is a people organized for law within a definite territory”.

Among the definitions given by contemporary writers, those of Garner and MacIver deserve special mention. Garner says “The State, as a concept of political science and public law, is a community of persons more or less numerous, permanently occupying a definite portion of territory, independent, or nearly so, of external control and possessing an organised government to which the great body of inhabitants render habitual obedience”.\*

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\*Political Science and Government, p. 52.

MacIver's definition which carries with it a pluralistic tinge is: "The state is an association which, acting through law as promulgated by a government endowed to this end with coercive power, maintains within a community territorially demarcated the universal external conditions of social order".

Definitions like those of Hegel are highly abstract and rather one-sided. Hegel defines the State as "the incorporation of the objective spirit"; "the actualisation of concrete freedom"; "the realisation of the moral idea", etc. While these definitions do full justice to the philosophical aspect of the State, they entirely ignore the legal and constitutional aspects.

**The Organic Nature of the State.**—From the days of Plato down to the present day it has been the common stock-in-trade of political thinkers to compare society and, in turn, the State to a living organism. Some have used the analogy cautiously, while some have tried to apply it at every point, with the result that not a few among the most serious minded writers on political science are inclined to dismiss the conception wholly as being useless, if not mischievous.

Plato compared the State to magnified human being. He drew an elaborate parallel between the functions of the State and those of the individual. His three-fold classification of society into the rulers, the warriors, and the working classes, Plato bases upon the three faculties of the human soul, viz. wisdom, courage, and desire. The State is to him like the capital letter "A" while the individual is comparable to the small letter "a". Aristotle drew a comparison between the symmetry of the State and symmetry of the body and held firmly to the belief that the individual is an intrinsic part of society. Cicero, who in many respects depended upon the Greek thinkers for his political ideas, brought out a parallel between the head of the State and the spirit which rules the body. In the early days of the Christian Church, St. Paul regarded the Church as the living body of Christ. On the

basis of this teaching medieval writers based their controversies on the relative claims of the Church and State to the allegiance of man in both spiritual and secular affairs.

Among the early writers of the modern period, Hobbes and Rousseau gave much attention to the organic conception of the State. Hobbes compared the State to a huge, imaginary monster called the Leviathan, "which is but an artificial man, though of greater strength and stature than the natural". He even drew a minute parallel between the weaknesses of the State and human ailments. Thus the State could suffer from boils, scabs, pleurisy, etc.! This elaborate parallel between the social organism and individual organism is amusing, coming as it does from one who adheres to the social contract theory, according to which the State is a deliberate creation of the human will. According to Rousseau, both the body politic and the human body possess the "motive powers" of "force" and "will". The legislative power of the State is compared to the heart and the executive power to the brain.

The nineteenth century political thought began with a reaction against the view that the State is an artificial creation of man. It tried to establish the truth that the State was not man-made, but a gradual, unconscious, and inevitable development of human nature. In this endeavour the familiar conception of the organic nature of society was revived and became a fundamental art of the thinking of German idealists, especially. Fichte, who belonged to this latter group of theorists, was the first to bring out clearly the interdependence of the individual and society. He held that the individual had no meaning and significance in and by himself, apart from society, but was an essential part of the social whole. In his own words "In the organic body each part constantly maintains the whole, and is in maintaining the whole thereby itself maintained; just so stands the citizen in relation to the state". Early idealists thus looked upon the State as a moral organism.

Among later German writers, it was Bluntschli who exaggerated the organic doctrine more than any of his predecessors. He went so far as to attribute qualities of sex to the State. The State, he said, was masculine in character, while the Church was feminine and on this ground, Bluntschli vigorously opposed the extension of political rights to women. In spite of this exaggerated description, there are elements of truth in the organic conception of the State as presented by Bluntschli which need to be noted. The State, he says, is a moral and spiritual personality. "As an oil painting, he says, is something more than a mere aggregation of drops of oil, as a statue is something more than a combination of marble particles, as a man is something more than a mere quantity of cells and blood corpuscles, so the nation is something more than a mere collection of external regulations.\*

Herbert Spencer in the 19th century is the supreme example of a writer who works out to the minutest possible extent the parallel between an individual organism and a social organism and yet misses the essential points of the comparison. He uses the organic analogy to prove his own preconceived notions of individualism. The analogy is used so very literally in an earlier Essay that the up and down lines of a railway are compared to the arteries and veins of an animal. Money is compared to the blood corpuscles and the telegraph wires to the nerves. The text on which Spencer preaches a homily is "an organism grows and is not made". The homily is that since the State is an organism it should be allowed to grow of its own accord, to grow spontaneously, and should not be propped up by artificial aids. Free education, compulsory sanitation, public libraries, public parks, etc., all interfere with the spontaneous growth of the organism, and are, therefore, unjustifiable. Spencer overlooks the fact that since the State is a highly evolved and cultivated organism,

\* Garner. 'Introduction to Political Science,' p. 59.

the proper comparison is not between it and a simple type of organism like the jelly-fish, but between it and a more evolved and cultivated organism like a plant in the garden or a domesticated animal. An organism of the higher kind grows as well as is made. But Spencer's organic State chooses even to remain at the jelly-fish stage. Moreover, Spencer does not seem to see that in the realm of polities, one who uses metaphors as literally as he himself does, can deduce from the analogy of an organism with its central idea of a nervous system, a theory of State socialism with greater ease and logical consistency than he is able to deduce his extreme individualism, with its accompanying doctrine of natural rights. As E. Barker points out, Spencer adopts where it is useful, and rejects where it is not, the organic conception of the State.

**The Value of the Organic Theory.**—Almost the first thing that needs to be said in the use of this conception is that analogy is not argument. To establish a parallel between two objects is not necessarily to establish a logical connection between them. It is the failure to recognise this simple truth that accounts for the literal way in which the organic conception has been used by writers like Bluntschli, Spencer, and Schaffle. We must remember that what an analogy can do after all is to make difficult things plain and abstruse things clear. It cannot take the place of proof.

Society or the State is not an organism. It is *like* an organism in some respects and unlike an organism in other respects.

- (1) Like a physical organism, it has in it the principle of life, growth, and development. We are not prepared to say with some writers that every State passes through youth, manhood, old age, decay, and death. Since the changes that occur in the social organism are more or less imperceptible and incapable of exact measurement, we cannot very

well apply to society terms like manhood, old age; decay, and death. Nevertheless, we believe that societies and States have a life, will, and continuity of their own apart from the lives and wills of the individual members living at any one time.

- (2) In the social organism, just as much as in the individual organism, there is present the inter-relation and inter-dependence of parts. The parts depend upon one another and upon the whole; and the whole in turn depends upon the parts. The welfare of each is involved in the welfare of all. Individual good and social good are intimately related. What concerns the individual sooner or later concerns the rest of society as well, although the intensity of feeling is not so strong as in the case of the individual organism. Society is not a loose collection of isolated or unrelated individuals. It is an organic unity, a living structure. It has a responsibility to the individual even in that sphere of conduct which Mill styles "self-regarding." Just as the family is bound to take an interest even in the supposed individual interests of its members, so also is society found to take such an interest. This does not mean that society should always be meddling in all individual matters.
- (3) Both the individual organism and the social organism embody the principle of differentiation of parts and the related principle of the distribution of functions according to fitness. It is impossible that the whole body should be an eye, or ear or stomach. In the striking words of St. Paul "The body is not one member, but many. If the foot shall say, because I am not the hand, I am not of the body; is it therefore not of the body? And if the ear shall say, because I am not the eye, I am not of the

body; is it therefore not of the body? . If the whole body were an eye, where were the hearing? If the whole were hearing, where were the smelling ?.....: Now are they many members, yet but one body. And the eye cannot say unto the hand, I have no need of thee; nor again the head to the feet, I have no need of you.....And whether one member suffer, all the members suffer with it; or one member be honoured, all the members rejoice with it.”\*

To press the analogy beyond the above general truths is sure to lead us to difficulty. The State is not an organism in the sense of being a physical structure. It is a mental structure, “a union of different minds in a common purpose.”†

It is a self-determining system of minds which are themselves self-determining. It is not a mechanical unity.

To Gettell we owe the following points in summing up the value and limitations of the organic theory.

#### Value.—

- (1) The theory teaches us the importance of the historical and evolutionary points of view.
- (2) It insists upon the effects of the natural and social environment.
- (3) It lays stress upon the interdependence of citizens and political institutions.
- (4) It emphasizes the essential unity of social life and the intricate causal inter-relations of all its parts.
- (5) It teaches that society is something more than an aggregate of individuals loosely thrown together without any unifying bond. It shows clearly that the members individually are in a peculiar sense dependent upon the whole and the whole in turn is conditioned upon the parts.

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\* I Cor. 12: 14-26.

† Barker.

(6) It believes that men by nature are "political beings" and that their universal tendency to social organisation creates the State.

**Limitations.**—At the same time, many of the analogies between the State as an organism and the individual organism, while striking, are often far-fetched and contradictory.

- (1) The will of the State is not always identical with the wills of its component units.
- (2) In the individual organism, the laws of evolution are followed intuitively. The growth of the State, however, is in a large measure capable of conscious direction and control.
- (3) The organic theory further runs the risk of magnifying the State as an end in itself, and of losing sight of the fact that the purpose of its existence is the well-being of its individual members. In other words, it is in danger of sacrificing the individual to society.
- (4) The individual in the State does not exist solely to support and perpetuate the life of the whole. Each individual has to a large extent the shaping of his own life. He has a consciousness and will of his own. All this is not true of the cells of the animal organism.
- (5) A physical organism perishes and ceases to be living matter if the members are cut off. Such is not the case with a State where a member separates himself from it.

In conclusion, it must be said that the organic theory, being of a flexible character, should be used with great caution. Analogy should not be pressed too far. To apply it at all points is sure to lead to illogical and even absurd results.

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**SELECT READINGS.**

Barker,—*Political Thought in England from Spencer to To-day*, pp. 175–183.

Follett,—*The New State*, Chs. 28–23.

Garner,—*Introduction to Political Science*, Ch. II.

” ”,—*Political Science and Government*, Chs. IV—VII.

Gettell,—*Introduction to Political Science*, Chs. II—IV.

” ”,—*Readings in Political Science*, Chs. II—IV.

” ”,—*Problems in Political Evolution*, Ch. III.

” ”,—*History of Political Thought*.

Gilchrist,—*Principles of Political Science*, Ch. II.

Leacock,—*Elements of Political Science*, Ch. I.

Mac Iver,—*The Modern State*, INTRODUCTION.

Rousseau,—*The Social Contract*, Chs. II, IX AND X.

Seeley,—*Introduction to Political Science*, I—II.

Willoughby,—*The Nature of the State*, Ch. II.

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## CHAPTER III

### THE ORIGIN & EVOLUTION OF THE STATE.

In discussing the origin of the State, it is wise to distinguish the primary or pre-historical origin of the State from the evolution of the State in historical times. The first question is more or less of a speculative character. It takes us back to the pre-historical ages and to primitive man. We have no authentic information as to how the State first began. The modern sciences of sociology, ethnology, and anthropology and the history of law no doubt cast some light upon this dim past, but, they are unable to give us an insight into the primary origin of the State. As Gilchrist aptly remarks, "Of the circumstances surrounding the dawn of political consciousness from history we know little or nothing."\* In spite of this uncertainty, we are safe in saying that the state has existed in some form or other—rudimentary or somewhat developed—wherever human beings have lived together in large numbers. Lacking positive historical proof concerning primitive political institutions, we are obliged to resort to inferences and generalisations regarding the dim past on the basis of the slender evidence at our disposal.

#### THE PRIMARY OR PRE-HISTORICAL ORIGIN OF THE STATE :

Various theories concerning the primary or pre-historical origin of the State have been propounded by historical and political writers. These theories are :

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\* Principles of Political Science, p. 49.

- (1) The Divine Origin Theory ;
- (2) The Social Contract Theory ;
- (3) The Force Theory ;
- (4) The Patriarchal and Matriarchal Theories ;

and (5) The Historical or Evolutionary Theory.

There is common agreement among writers that the first three of these are fallacious in character while the last mentioned seems to furnish the most correct explanation regarding the origin of the State.

**1. The Theory of Divine Origin.**—This is the oldest theory concerning the primary origin of the State. According to it, the State is established and governed by God Himself or by some superhuman power. God may rule the State directly or indirectly through some ruler, who is regarded as the agent or vice-regent or vicar of God. Such a State is known as a theocratic or God-ruled State. The Divine Origin or the theocratic conception is almost as old as the State itself and is found universally among early peoples. It is a well-authenticated fact that early forms of political authority were believed to be connected with the unseen powers. The earliest rulers were a combination of priest and king or the magic man and king.

The chief exponents of the Divine Origin Theory in the early times were the Jews. In the old Testament we have constant references to the conception that God selects, anoints, dismisses, and even slays rulers. The king is treated as owing responsibility to God alone for his acts. The Greeks and the Romans regarded the State as only indirectly divine. Although they did not divorce religious ideas from politics, they regarded the State as a natural manifestation of man's political instincts. "The Roman legend of the foundations of Rome, while not omitting religion, said that the people and king created the State. The blessings of the gods followed." \*

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\* Gilchrist, op. cit., p. 73.

The theory of Divine Origin found some of its most earnest supporters among the early Church Fathers who based their teaching on the exhortation of St. Paul to the Romans: "Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God."\* Two of these Church Fathers were St. Augustine and Pope Gregory the Great. The latter regarded the authority of law as ascribable to God, while the Roman legal theory ascribed it to the will of the people. The influence of the Teutonic ideas was on the side of popular government.

The teaching of the Old Testament and the Church Fathers profoundly influenced the medieval writers in the controversy between the Church and the Empire. Some of these writers used the divine theory to establish the supremacy of the Church over the State and others to establish the supremacy of the State over the Church. The point at issue was whether governing authority, which all agreed came from God, was in the first instance conferred upon the emperor or upon the pope. The Augsburg confession of 1530 declared that "all authority, government, law and order in the world have been created and established by God Himself."

The Protestant Reformation gave a great impetus to the Divine Origin Theory and to the related doctrine of passive obedience or non-resistance to governmental authority, although in religious matters it stood for individual liberty and the supremacy of the individual conscience. The Divine Origin Theory more and more took the form of the theory of the Divine Right of Kings. This is particularly true of sixteenth and seventeenth century England. The leading exponents of this latter doctrine were James I, the first Stuart king, and Sir Robert Filmer.

**The Divine Right of Kings.**—In his work called "The Law of Free Monarchies," James I gives a clear exposition

of this doctrine. He claims that the king has derived his authority directly from God. Therefore, he is above the people as well as above the law. He is subject to God and his conscience alone. He owes no legal obligation to the people. The only obligation that he has is a moral obligation to God to govern the people well. Kings make laws; laws do not make kings. The king "is master over every person, having power over life and death." James I assumes throughout his work that kings are wise and good, but that the subjects are weak and ignorant. A king, he declares, is a great school master for the whole land. A "Free Monarchy" he interprets as a monarchy which is free to do what it pleases.

Even if the king be wicked, the subject has no right to rebel against him. To rebel against the king is to rebel against God Himself, for the king is God's chosen vessel. A wicked king is to be regarded as a plague for people's sins sent by God. Therefore, it is unlawful to shake off such a burden. The only check on a bad king is his fear of punishment in the life after death, which is sure to be terrible. To quote the forcible words of James I, "Kings are justly called gods; for they exercise a manner of resemblance of divine power upon earth" "As it is atheism and blasphemy to dispute what God can do, so it is presumption and high contempt in a subject to dispute what a king can do or to say that a king cannot do this or that."

The salient features of the doctrine of the Divine Right of Kings are :—

- (1) Monarchy is divinely ordained ;
- (2) Hereditary right is indefeasible ;
- (3) Kings are accountable to God alone ;
- and (4) Resistance to a lawful king is sin. \*

It is more than likely that even the supporters of this doctrine did not fully believe in all its extravagant claims.

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\* G. P. Gooch.

The chief reason for advocating it, then, was that it might serve as a bulwark against the audacious claims of the Pope and that it might strengthen the State against the inroads of the Church. "Divine Right thus began its career as a defensive weapon against militant Catholicism" \* In supporting it, people forgot the danger of the king becoming a tyrant. What we find as a matter of historical fact is that the theory was used against the growing political consciousness of the people and the rise of democratic ideas, and was made to support royal despotism. It was not until the end of the eighteenth century that it was rejected as unsound in theory and dangerous in practice. In countries like Austria, Germany, and Russia it lasted for a still longer time.

To-day both the Divine Origin Theory and the Divine Right of Kings are without supporters among political theorists. To refute them in great detail is to flag a dead horse. It is sufficient to say that the general consensus of opinion is that although human institutions like the family, the state, etc., are in accordance with a divine plan or purpose, the origin of the State is not due to God's direct intervention in human history. The State is an historical growth. Its laws are created by men and enforced by them. "To say that God selects this or that man as ruler is contrary to experience and commonsense" † The State is the outcome of the political instinct of man and its authority is exercised through human agencies. The causes of the decline of the theory, as brought out by Gilchrist, are :—

- (1) The rise of the contract theory, with the emphasis it gave to consent;
- (2) The rise to supremacy of the temporal as distinct from the spiritual power, or, in other words, the separation of church and state;

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\* Gooch.

† Gilchrist, op. cit., p. 75.

(3) The actual refutation of the absolutism which the theory supported by the growth of democracy" \* As a doctrine of political philosophy, it received its death blow at the hands of Grotius, Hobbes, and Locke.

Although the Divine Origin Theory is an exploded theory and scarcely needs any serious consideration, yet it has had certain values, some of which are still suggestive:—

- (1) At a time when man was emerging from semi-civilised conditions and was not accustomed to obedience to a secular authority or to a self-imposed law, the doctrine of the divine origin of the State must have been a powerful factor in preserving order.
- (2) In the early days it was a bulwark against anarchy and did much to strengthen the respect of man for person, property, and government.
- (3) It may be interpreted to mean that the instinct for order and discipline is deep seated in man and that it reveals itself in political organisation.
- (4) It emphasises the fact that government is for the good of the governed. Even the absolute ruler owes a moral accountability to God for the way in which he exercises his authority.
- (5) Its supreme value lies in the fact that it indirectly emphasises the moral basis of the political order.

The State is no doubt a political institution and is concerned with external actions for the most part. It has no way of judging man's motives, and it is motives which determine the morality or immorality of an act. Even when it takes intentions into account, it takes an external view of them. Nevertheless, the ultimate end or purpose of the State is moral. Therefore, to regard the State as of divine creation is to emphasise the higher life or moral aspect of the State.

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\* op. cit., p. 75.

## 2. The Social Contract Theory.

### I. Statement of the Theory.

This theory holds that the State is the result of a deliberate and voluntary agreement on the part of primitive men emerging from a state of nature. It assumes that there was a period in human history when there was no State at all and no political law. This pre-civil or pre-political period is regarded by some writers as pre-social as well. In this state of nature the only law which governed human relations was the law of nature. Advocates of the Social Contract Theory are not agreed upon what exactly this law of nature was. The state of nature was either too idyllic to last long or too inconvenient and unbearable. Hence men in this primitive stage of natural Society soon abandoned the state of nature and set up a political society through the instrumentality of a covenant. As a result of the covenant each man lost his natural liberty in part or wholly, but in its place he obtained the security and protection of the State provided by political law.

The contract is interpreted in various ways by its advocates. According to some, it is responsible for the institution of civil society alone; while others regard it, in addition, as an agreement between the rulers and their subjects, resulting in the institution of a particular government. The first type of contract is known as the social contract, and the second as the political or governmental contract. The contracting parties of the original or the social contract are the individuals themselves, emerging from the state of nature, agreeing with one another and with all. The parties of the second or the governmental contract are the people in their corporate capacity, on the one hand, and an agent or ruler, on the other. A further difference which we find among the advocates of the Social Contract Theory is that while some regard it as an actual historical fact, others consider it as a historical fiction which conveys a philosophical truth. An

example of the former conception is found in Locke, while Kant illustrates the latter conception. To Kant the contract is merely an "idea of reason." One other difference to be noted among the propounders of the theory is the varied use to which they put it. Hobbes uses it to justify royal absolutism, Locke to support constitutional government or limited monarchy; Rousseau to uphold the doctrine of popular sovereignty. On the whole, the theory has been used to justify the conception that governmental authority, if it is to be legitimate, must rest ultimately on the consent of the governed. The weight of its influence has been in general in the direction of safeguarding the rights and liberties of the people and of checking the arbitrariness of rulers. It has also engendered a general irreverence towards the State because of its assumption that the State is an artificial creation and that governmental authority is a restraint upon man's natural freedom.

## II. *History of the Theory.*

The theory is almost as old as political speculation itself. In the Greek times, it was first found among the Sophists, who were professional teachers of wisdom. They did not belong to a single school of thought. Nevertheless, as a class, they regarded the State as an artificial creation, and built it upon man's self-interest. Political control they considered as essentially selfish in aim. The State, they said, was a hindrance to man's self-realisation and was opposed to the life of nature. It was the result of a contract.

Plato and Aristotle who represented the summit of Greek Political Philosophy repudiated the Social Contract Theory. To them the State was natural and necessary. Aristotle attributes it to the political instinct of men and traces it through the family, the society of many families known as the village, and the city or state. The State, to him, expresses the efforts of men to satisfy their individual desires and needs. "Man," declared Aristotle, "is a political animal." The

Epicureans who followed revived the Social Contract Conception. The key-word of their teaching was self-interest and they based the State upon that. They explained social and legal relations as resting wholly upon individual self-interest. Obedience to law was justified only when it protected the individual against personal injury. Justice to them did not mean anything more than some convention for mutual advantage. Political life, they said, "was burdensome and incompatible with the repose of spirit necessary for an ideal existence" \* In all these views of the Epicureans we see a fore-shadowing of the later Social Contract Theory. The Stoics, who were the contemporaries of the Epicureans and in many ways represented an opposite type of thinking, contributed to the Contract Theory the conception of natural law to be interpreted by man's reason. This conception of the natural law was later incorporated in Roman jurisprudence.

The contract notion played a considerable part in the thinking of the Hebrews and early Church Fathers. The Old Testament contains several instances of "covenants or contracts between the Lord and the people or between the king and the people." † Thus in II Samuel 5: 3, we read, "So all the elders of Israel came to the King in Hebron : and King David made a covenant with them in Hebron before the Lord ; and they anointed David King over Israel." On the strength of instances of this kind, ecclesiastical writers of the Middle Ages attacked the extravagant claims of the Emperor and held that all civil rulers derived their authority from a covenant with the people. It should be remembered that covenants of the kind described here are, strictly speaking, governmental contracts, and not social contracts explaining the origin of civil society.

In the Roman law the conception of the contract played a very conspicuous part. The people were regarded as the

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\* Gettell.

† Gilchrist, op. cit., p. 56.

ultimate repositories of political authority. Once again, we should remind ourselves that the idea of contract taught by the Romans was not the social contract of later writers, but a governmental contract. It was a contract between the people and government officials. Once officials were chosen, they had complete power and the people had no right to withdraw it. Thus no revolution was justifiable. In this respect we find that the Roman theory was more like the theory of Hobbes than like that of Locke. The Romans did not develop the idea that the State itself owed its existence to convention or agreement. The State was never viewed as anything so artificial as all that.

The Teutonic people among whom the love of liberty was strong, developed the contract idea still further. "Not only did the king (Teutonic) require the theoretical consent of the community for his election, but in actual practice he was under the law. In the Roman theory the authority of the ruler was derived from the people: in the Teutonic it was both derived from and continued under the people." \*

The social and political order of the Middle Ages was characterised by feudalism, which was essentially personal, private, and non-political. Yet the relation between the lord and his vassal was largely determined by the contractual conception. Feudalism prevented the growth of the idea of an absolute authority within a specified area. William of Ockam based civil government and private property on the consent of the governed. But the rest of the medieval writers did not express their political philosophy in contractual terms to any great extent. For a long time they laboured under the conception that civil society was the result of man's sin and that primitive anarchy was essentially blessed. But in course of time, influenced by the Roman law and Teutonic ideas, they accepted the conception that the State was created by the will of the community. While God was a "remote" cause of civil

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\* Gilchrist. *op. cit.*, p. 57.

society, the "immediate" cause was found in the will of a ruler or of the community at large.

It was in the latter part of the sixteenth, and in the seventeenth and eighteenth centuries that the contract theory received continuous and detailed development at the hands of Western writers, George Buchanan wrote a dialogue entitled "On the Sovereign Power among the Scots" (1579) justifying the deposition of Mary, Queen of Scots. His thesis is that the Scots have certain historical and customary rights against their rulers and that the ruler is entitled to the obedience of his subjects only if he faithfully carries out his terms of the agreement. The ruler is supposed to enter into a contract with his people implicitly at the time of his accession and explicitly in his coronation oath. The primary object of Buchanan's dialogue is to limit the rights of rulers over their subjects.

Among English writers, the first one to give a definite statement of the contract theory is Richard Hooker (1554-1600) in his *Laws of Ecclesiastical Polity* published in 1594. In the tenth section of the first book, Hooker outlines the social contract theory. As regards the law of nature and life of man in the state of nature, he adopts a middle course between the gloomy view taken by Hobbes and the roseate picture drawn by Rousseau in his earlier writings. The central question which the author faces is whether subjects should obey a political authority which they themselves have not set up. His answer is that the original contract obliges people to obedience and that if it is to be revoked, it can be done only by universal agreement. Since universal agreement is practically impossible to obtain, disobedience to political authority is nearly always wrong. Thus Hooker's position anticipates that of Hobbes. In spite of his advocacy of the contract theory, Hooker does not consider society to be purely artificial and contractual. The contract is to him a part of man's instinct and not the result of despair. "From the standpoint of psychology and of historical truth Hooker is

here far in advance of Hobbes with his grossly mechanical interpretation of the facts of community.”\*

On the continent about this time the theory was outlined by Althusius. He maintains that only the social contract is necessary. It “consists in the agreement of every man with every man to live in an orderly and law-abiding society. In this contract the ruler, if there be one, is included as an individual but not as a ruler .. There may be a secondary contract between the ruler and his people; but this only concerns and defines the terms by which the people or society confers especial or eminent authority upon the ruler.” †

The Social Contract Theory of Hobbes, Locke, and Rousseau is dealt with separately in the next chapter. After Rousseau the theory gradually “withered away.” Kant and his disciple Fichte used it at some length. Kant used the contractual conception to measure the justness of laws. Fichte’s ideas on the subject were not always consistent. In his earlier writings at any rate he advanced the idea that man was subject to the moral law alone and that therefore he could terminate the contract at any time he pleased. In the world of practical affairs the Social Contract Theory of Rousseau influenced the French Revolution, and the theory in general had its effect upon the makers of the American constitution.

The nineteenth century marked the decline and downfall of the contract notion. This was brought about largely by the historical and scientific attitude of the period which replaced the former speculative approach. Montesquieu in France gave an impetus to the historical method in politics, and Darwin and his followers helped thinkers to understand and interpret institutions in the light of evolution.

*III. Criticism of the Social Contract Theory.*—The Social Contract Theory has been attacked from three different angles, the historical, the legal, and the philosophical or rational.

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\* Ivor Brown. *English Political Theory*, p. 35.

† Lord. op. cit., p. 49.

(a) *Historical*—

- (i) The most obvious criticism that suggests itself to one is that the theory has no basis in fact. To assume that primitive men came together at some particular time and established a political society by means of a contract is to read history backwards. The idea is too advanced for primitive man. It is a mere fiction. No one has yet been able to give a single instance of a State coming into being as the result of a deliberate and voluntary agreement between individuals emerging from a state of nature. It is true that the Mayflower Compact (1620), the Providence Agreement (1636), etc., are given as instances of the historicity of the social contract. But it must be remembered that the men who formed these contracts were not emerging from a state of nature. They had been living in the State elsewhere, were well acquainted with political organisations there, and were simply transplanting to new lands institutions and ideas with which they were already familiar.
- (ii) There have been historical examples of governmental or political contracts. But such contracts are contracts between people already living in the civil state. They do not by any means explain the historical origin of the State. They only define the rights and duties of the rulers and subjects. Governmental contract is a fact, but social contract is a fiction.
- (iii) The theory assumes that primitive man was much of an individualist. It assumes that he was a free man who could enter into voluntary agreements with other free men. This is not what research into early times shows. Early law was more communal than individual. The individual was

of little importance. The family was the unit. Property was held in common. Law took the form of customs. The individual had his prescribed place in society. Under such circumstances free contracting of individuals with one another in so important a matter as the institution of the State, is an absurdity.

(b) *Legal*—

- (i) Even if we assume for the sake of argument that primitive man had advanced far enough in his social consciousness to enter into a contract, the fact remains that such a contract has no legal binding force whatever. A contract, in order to be valid, requires the force or sanction of the State. But for this contract there is no such sanction, for it precedes, and does not follow, the establishment of the State. In the words of T. H. Green, "the covenant by which a civil power is for the time constituted cannot be a valid covenant. The men making it are not in a position to make a valid covenant at all".\* There is no "imponent" back of it.
- (ii) Thus, if the original contract has no legal meaning and is invalid, all subsequent contracts based upon it are equally invalid, and the rights derived from it have no legal foundation.
- (iii) Besides, a contract has binding effect only upon those who accept it voluntarily. But the social contract is supposed to bind generations of men who have had no say in the matter at all. If the fathers eat sour grapes, why should their children's teeth be set on edge? In reply to it, it may be argued, as is done by Locke, that residence in a State constitutes tacit assent to the original contract. This is just a patent evasion of the difficulty.

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\* *Principles of Political Obligation*, p. 64.

Strictly speaking, the State should expire with the death of the original parties and every new generation should enter into a fresh contract. It needs hardly any demonstration to prove that such a state of affairs would undermine political authority and even result in the dissolution of the State itself.

(c) *Philosophical*.—The theory is open to several objections on the philosophical side. These objections are even more important than the historical and legal objections. As said already, several of the contract writers admit that the contract notion is only a historical fiction and yet use it in order to convey certain philosophical principles. The objections are :—

(i) The theory assumes that the relation between the individual and the State is a voluntary one. This is a position which will not stand careful scrutiny. We are members of a State in the same way in which we are members of a family. Membership of a child in the family and its duty of obedience to its parents do not rest upon the basis of consent. We are born in the State, and we do not ordinarily choose it; and if, later on, we change our citizenship we are still in the State. The State is not an artificial creation of man. Membership in it is not voluntary. If the State were a voluntary organisation, like a company or firm, a person would be at liberty to enter it or leave it at will. The obligations of the citizen to the State are not contractual at all. If the literal consent of every citizen were the justification for State action, State life would become an impossibility, for there is hardly any matter upon which we can get unanimous agreement. An individualist like Spencer who starts out with the idea that literal consent is the only basis of political obligation, virtually admits the futility of such a position. The contract

writers try to get over this difficulty by assuming that a unanimous consent is necessary for the original contract, but that majority vote will suffice after that. This is illogical. If we begin with unanimous consent, should we not adhere to it throughout?

The State is not a mere partnership in the ordinary sense of the term. To use the oft-quoted and striking words of Edmund Burke, "the State ought not to be considered as nothing better than a partnership agreement in a trade of pepper and coffee, calico or tobacco, or some other such low concern, to be taken up for a little temporary interest, and to be dissolved by the fancy of the parties". If the State is a partnership at all, it is a partnership in a higher and more permanent sense. To quote Burke again, "It is a partnership in all science; a partnership in all art; a partnership in every virtue, and in all perfection. As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are dead, and those who are to be born". Thus, the individual is not a member of the State through voluntary association. He is a born member of it. His obligations "do not rest upon covenant or consent, but rather upon the general interests or necessities of society, or upon grounds of utility." \*

(ii) The entire conception of the state of nature and of the laws of nature is unsound. It assumes that whatever preceded the institution of the State is "natural" and that whatever has followed it (including the institution of the State) is artificial. There is no warrant for dividing history into two

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\* Garner. Introduction to Political Science, p. 113.

parts with a hatchet, so to speak. Civilisation is as natural to-day as was barbarism in the past. Man is a part of nature and the State is the highest expression of his nature. The State is a growth and not a manufacture. "Men do not make a bargain consciously; the agreement exists because of their nature". \*

Even if we grant that there was a state of nature governed by laws of nature, meaning thereby laws of inherent morality, the setting up of a State in such a situation is not a progressive step, but the opposite. To exchange laws of inward morality for the force of the State is a backward step. As Green puts it, "A society governed by such a law as a law of nature, i.e., with no imponent but man's consciousness, would have been one from which political society would have been a decline, one in which there could have been no motive to the establishment of civil government" †

Furthermore, if the state of nature is one where a contract could be formed, it must have been a state where there was a consciousness of a common good, implying the ideas of social authority and individual obligation. But such a one, we claim, does not materially differ from a civil or political state. It is virtually, though not in name, a political state. The necessary elements constituting a political society are already present there.

- (iii) The Social Contract Theory implies a false notion of rights. T. H. Green aptly remarks, "The real flaw in the theory of contract is not that it is unhistorical, but that it implies the possibility of rights

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\* Gilchrist. op. cit., p. 69.

† op. cit., p. 72.

and obligations independently of society." According to any sound view of rights, the basis of rights is *social recognition*, i. e. recognition on the part of society of a common good of which the individual good is an intrinsic part. Rights can exist only between persons, in the moral sense of persons; i. e. persons possessed of rational will. But the contract theory assumes that we can have rights even in a pre-social state. Such rights, we contend, are not rights at all. They are mere powers. To quote Green again, 'Natural right as a right in a state of nature which is not a state of society, is a contradiction. There can be no right without a consciousness of common interest on the part of members of a society' \*

#### IV. *Elements of Truth in the Theory.*

Although as a theory explaining the origin of the State or the right relations between man and man in society, the Social Contract Theory is defective and finds no support to-day, it contains certain elements of truth. If we are to understand the theory properly, as it was elaborated in the 17th and 18th centuries especially, we should know the practical aim which impelled its adherents to enunciate it, namely, to give a more satisfactory and human explanation of the fact of political authority and the duty of obedience rather than explanations based upon divine fiat. In the place of the Divine Right Theory which called upon subjects to render unquestioning obedience to the "powers that be", the Social Contract Theory laid down the fundamental truth that obedience rested upon the consent of the governed and that the sovereign had no right to act arbitrarily. In working out this truth, the Social Contract Theory served as the basis for modern democracy. It emphasised "the importance of the individual, the possibility of

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\* *Principles of Political Obligation*, p. 48.

modifying political institutions by direct human effort, and the fact that ultimate political authority lies, at least potentially, in the people". \* Thus it was that "Advocates of freedom preferred it for it suggested ways of limiting the claims of arbitrary authority. All who aspired to philosophy preferred it: for a contract can be discussed, criticised, and amended, whilst the fiat of Heaven cannot. And if we set aside its peculiar historical context, it is still attractive; for it appeals to one important aspect of human experience." †

**3. The Force Theory.**—According to this theory the State is the result of superior physical force; it originates in the subjugation of the weaker by the stronger. It is natural to suppose that in primitive times the man of exceptional physical strength was able to overawe his fellow men and to exercise some kind of authority over them. The same is probably true also of superior tribes and clans in their relation to other tribes and clans. On the basis of this supposition, advocates of the force theory contend that all States have come into being through physical coercion or compulsion. Jenks, who is a prominent supporter of this theory in his *History of Politics*, holds that there is not the slightest difficulty in proving that all political communities of the modern type owe their existence to successful warfare. So, according to this theory, it is war that begets the State. Advocates of the theory argue that what they regard to be the fundamental features of modern political society—military allegiance and territorial character are based on the relation between the war chief and his followers and on conquest which brings under the authority of a single ruler people of different countries and of different races.

Like the Divine Origin and the Social Contract Theories that we have considered already, this theory is advocated both as an explanation of the historical origin of the

\* Gettell. *Introduction to Political Science*, p. 85.

† Lord. op. cit., p. 43.

State and as a rational justification of the State to be; and like them, also it is defective on both counts. In its practical form, it reduces itself to the position that government is the outcome of human aggression. Such a view is found in the earlier works of Herbert Spencer who says, "Government is the offspring of evil, bearing about it the marks of its parentage." We admit that force must have been an important factor in the evolution of the State, but to regard it as the one and only factor is a clear mistake. Several other factors must have entered into the make-up of early political societies.

Force is an essential element of the State both for internal unity and for security against external attack. Without the element of force, the State would become a prey of disruptive factors and soon cease to be. But force alone cannot account for the historical origin of the State or for its continuance in modern times. "Might without right can at best be only temporary; might with right is a permanent basis for the State."\*

The Force Theory, like the Social Contract Theory, has been used for various purposes. Some have argued that since the State is the outcome of force, people should obey it absolutely. Such a position seems altogether illogical. As Rousseau has pointed out clearly † the right of the strongest is no right at all. Right based upon might lasts only as long as might lasts. "But what kind of right is that which perishes when force fails?" To quote Rousseau again, "Force is a physical power.....To yield to force is an act of necessity, not of will—at the most, an act of prudence."‡ Some of the early Church Fathers also used the theory, their purpose being to discredit the State as compared with the Church. They argued that the State was based on brute force, while the Church was the work of God and hence superior. The individualists, as

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\* Gilchrist, op. cit., p. 79.

† *Social Contract*, Bk. I, ch. III.

‡ *Ibid.* p. 8.

well as the socialists, have also employed the force theory to support their respective doctrines. The individualist argument is that just as the State is the result of superior strength, so within society itself the race should be for the swiftest. This means unrestricted competition and unlimited scope for individual efforts. The socialists attack this argument on the ground that individualism means an improper use of force, and that the State, by means of its superior force, should check the exploitation of the weaker by the stronger and mete out justice to the workers.

**4. The Historical and Evolutionary Theory.**—This is the most widely accepted theory regarding the origin of the State. According to it, the State is a historical growth or the result of a gradual evolution. It is a continuous development. It cannot be referred back to any single point of time. As Burgess puts it, "it is the gradual realisation.....of the universal principles of human nature." It is futile to seek to discover just one cause which will explain the origin of all States. The State must have come into existence owing to a variety of causes, some operating in one place and some others in other places. Whatever it is, the State is not the deliberate creation of man, any more than language is a conscious invention. Political consciousness must have taken a very long time to develop and the primitive State must have grown along with the development of this consciousness.

**5. The Patriarchal and Matriarchal Theories.**—While there is general agreement that the origin of the State should be understood in terms of evolution, there is considerable difference of opinion as to the stages in this evolution. It is in this connection that we come across the patriarchal theories.

*The Patriarchal Theory.*—Sir Henry Maine is a chief advocate of this theory. He defines it as "the theory of the origin of society in separate families, held together by the authority and protection of the eldest male descendant." He

believes that the State is the family writ large. He assumes that the original group consisted of a man and his wife and children and that this family soon gave rise to several families and that the original father or the eldest male descendant became the protector and ruler of this common patriarchal family. Relationship is traced in such a family through males, and from the same ancestor. The State is simply a further development of the patriarchal family. To state this development in Maine's own words, "The elementary group is the family connected by common subjection to the highest male ascendant. The aggregation of families forms the Gens or House. The aggregation of Houses makes the Tribe. The aggregation of Tribes constitutes the commonwealth."

The theory rests on three fundamental assumptions :

- (1) That the patriarchal family was based on permanent marriages and kin relationships ;
- (2) That the State is a collection of persons descended from the progenitor of an original family ; and
- (3) That the ultimate source of all political authority is to be found in the extensive and unlimited power exercised by the head of the patriarchal family, who on his death-bed bequeathed to his successor all the legal rights that he enjoyed.

*Evidence in Support of the Theory.*--In support of the theory, its advocates adduce the family history of the Hebrews, of the Greeks and Romans, and of the Aryans of India. Among the Hebrews the eldest male parent was absolutely supreme and exercised almost despotic power over his dependents. He held the possessions of the family in a representative rather than in a proprietary manner. The Athenians had their "families" and "brotherhoods," and in Rome the "patria potestas," the power of the father, "gave the head of the household almost unlimited authority over its members." In India, too, where the joint family system prevails, large numbers

are included in one household under the headship of the eldest male. "In certain rude communities to-day large groups of individuals have been found in one so-called family, each man having large numbers of brothers or sons or cousins. The patriarchal theory, adopting this as the unit and supposing the headship bequeathed from one chief to another, by easy stages transforms the father into the chief or king and the family into a civil community." \*

It is interesting to note that we can find traces of the patriarchal theory even as early as in the writings of Aristotle. In his *Politics*, Aristotle observes, "The family arises first;....when several families are united, and the association aims at something more than the supply of daily needs, then comes into existence the village. When several villages are united in a single community perfect and large enough to be nearly or quite self-sufficing, the State (polis) comes into existence."

*Criticisms of the Theory.*—(1) Modern research into the history of early man shows that the patriarchal system was by no means universal. There are some who contend that the matriarchal system, where relationship is traced through the mother, was earlier in point of time. McLennan, who is a staunch advocate of the Matriarchal Theory, claims that polyandry and the matriarchal family were the primary social facts and that polyandry later developed into the monogamous family, and the matriarchal family into the patriarchal state.

(2) Jenks, who is another strong supporter of the matriarchal theory, asserts that the process by which families expand into clans and clans into tribes according to Maine's conception is, in fact, the reverse. † According to Jenks, the tribe is the earliest and the primary group, then comes the clan, and finally comes the family. In support of his conten-

\* Gilchrist. *op. cit.*, p. 85.

† Garner. *Introduction to Political Science*, p. 118.

tion, Jenks gives the examples of certain societies among the primitive races of Australia, Malay Archipelago, &c.

(3) The existence of polyandry and transient marriage relations and kinship through females in uncivilised communities shows that the patriarchal family did not continuously exist.

(4) The most serious criticism of the theory is that it does not account for the origin of the State. It is simply a speculation into the beginnings of early society, particularly of the family.

*The Matriarchal Theory.*—It is suggested by the institutions of savages still in existence such as the Aborigines of Australia and certain communities in India. Savage life discloses a type of society which appears to be more primitive than the patriarchal society. The fundamental features of this savage society are:

- (1) Transient marriage relations,
- (2) Female kinship,
- (3) Maternal authority,

and (4) Succession of females only to property and power.

Some writers on the matriarchal theory consider all these four features as essential, while others mean by the theory only "mother-right" and "mother-relationship", and not "mother-rule." It is the latter of these two views which seems more reasonable.

According to the matriarchal theory, in the above restricted sense, the matriarchal family precedes the patriarchal family. It is natural to suppose that polyandry and transient marriage relations were more common in primitive society than monogamy or polygamy. The Veemah marriage also existed, according to which the husband is incorporated into his wife's family. Under such circumstances descent is traced through the mother, for, as Jenks points out, motherhood in such cases is a fact, while paternity is only an opinion. The woman here, says MacIver, is regarded as the agent of transmission, not

the active wielder or even the participant of power. "The system gave the woman, the wife and mother a *social* rather than a *personal* standing." \* It was at a later stage that "mother-right" gave place to the patriarchal society "through the adoption of settled pastoral and agricultural habits in place of the purely wandering or hunting life of primitive man." †

*Criticism.—*

- (1) Though examples can be found of the polyandrous type of society in various parts of the world, there is no proof to regard it as universal or as the necessary beginning of society.
- (2) Other forces and elements besides patriarchal and matriarchal relations must have entered into the process of political organisation.
- (3) Both the patriarchal and matriarchal theories undertake to perform too big a task. They seek to enquire into the beginning of human society. "The most archaic human society we can picture to ourselves is removed from the actual origin of mankind by a lapse of time demanding geological rather than historical measurement."
- (4) Besides, both these theories are more sociological than political. They seek to explain the origin of the family, rather than that of the State. The assumption that the State is the family writ large is entirely wrong, for the two institutions are quite different "in essence, organisation, functions, and purpose." ‡

The conclusion to which we are led with regard to both the patriarchal and matriarchal theories, can best be summed up in the words of Leacock : "No single form of the primitive family or group can be asserted. Here the matriarchal

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\* MacIver.

† Leacock. Elements of Political Science, p. 41.

‡ Garner.

relationship, and there a patriarchal regime, is found to have been the rule,—either of which may perhaps be displaced by the other. Indeed one has to admit the fact that there is no such thing as a 'beginning' of human society. All that can be asserted is that in the course of time the monogamic family tended to become the dominant form, though even until to-day it has not altogether supplanted other forms of organisation. This does not say, however, that paternal control of the family is to be looked on as the one necessary beginning of government and social control. For it must have happened in many instances that social authority of a rudimentary sort existed where as yet the monogamic family was unknown."\*

*Factors in State-Building.*—It is much more profitable to enquire into the factors which have gone into the building up of the early State than to attempt to discover a single theory in explanation of the origin of all States. As seen already, the State must have arisen from various causes and under different conditions. Its emergence is almost imperceptible. The chief factors which have influenced the formation are:

(1) Kinship, (2) Religion, and (3) Political Consciousness.

1. *Kinship.*—There can be little doubt that social organisation had its origin in kinship. Blood relationship, either real or assumed, was the most important bond of union. It knit together clans and tribes and gave them unity and cohesion. But kin-relationship by itself could not have led to the formation of the State. People had to develop a consciousness, common interest and common purpose. Kin-relationship must with great difficulty have given place to social relationship. "Kinship," says MacIver, "creates society and society at length creates the state" †

It is natural to suppose that authority and organisation, resembling political authority and political organisation, first

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\* p. 41.

† p. 33.

came into being with the institution of patriarchal society. Prior to this man must have been a hunter and wanderer; sex relations must have been promiscuous; and polyandry and transient marriage relations must have been common. There was probably no common authority. Whether such a state of affairs should be called the matriarchal society or not is immaterial for our present purpose. Whatever it be, the onward march of mankind meant the abandoning of such a state of affairs, not necessarily consciously, and working towards a type of society which we call patriarchal. The factors which went to the establishment of such a society were domestication of wild animals, increased wealth, control of property, pursuit of pastoral industry, and the institution of slavery. Of these factors, control of wealth was probably the most important. Property had to be possessed securely and disposed of in an orderly manner. This meant the increasing social dominance of the male.

Patriarchal society was organised on the basis of kinship through males. Women came to be regarded more and more as a form of property. Wives had to be sought outside one's own group. Marriage relations became more permanent and polygamy was the order of the day. The Patriarch or the House Father had complete control over the lives and persons of his descendants in the male line. When he died authority passed to the eldest male descendant. The practice of adoption in order to continue the male line, was wide-spread. This patriarchal community did not go on growing and developing till it became a nation. It broke up into several patriarchal groups, all recognising some form of allegiance to original group. The heads of these groups or class probably formed a council of elders assisting the Patriarch, who later became the tribal chieftain, and this chieftain combined military, judicial, and religious authority. The rulers or chiefs were more concerned with the privileges and powers of the dominant few than with the welfare of the community.

In the patriarchal society custom played a very important part. It took the place of law. As yet there was no conception of morality or a definite sense of legality. "The customary is both the right and the permitted." The sense of individual initiative and responsibility was altogether lacking. The patriarchal law was enforced by the Patriarch or the House Father who was both the judge and executioner. Custom governed both him and the accused. Custom was the king of men and was only gradually transformed into law. As yet there was no State in any accepted sense of the term, but some of its constituent elements were present. MacIver aptly says that it is a mistake to think "that wherever we find a 'headman' in a savage tribe we are in the presence of the State. We cannot say when or where the State begins. It is implicit in the universal tendency to leadership and subordination, but it only emerges when authority becomes government, and custom is translated into law." \*

Patriarchal society differed fundamentally from modern society in the following ways: †

1. It was *Personal*, rather than territorial. Membership in the community was based upon kinship—real or fictitious—rather than on locality. The whole group might migrate without disturbing its organisation. Early kings were kings of their people, and not of their land.
2. It was *Exclusive*. It had no lust for numbers. Strangers had to live outside the ancient city-walls. They could be admitted into the group only by adoption or as slaves.
3. It was *Non-competitive*. Its life was based on custom. It bound all alike and fixed the scale of social duties and rewards. The idea of change or of progress was looked upon with disfavour.

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\* MacIver. *The Modern State*, p. 42.

† Jenks. *The State and the Nation*, Ch. VIII.

4. It was *Communal*, not necessarily communistic. It was a series of concentric groups, beginning with the single household, ascending to the village or guild, finally to the tribe or city. Interdependence, rather than independence, was the ideal. '*Laissez faire*' was wholly alien to it. It tended to repress individual effort and to restrict the free play of intelligence. The freedom of patriarchal society meant the freedom of the group, rather than the freedom of the individual.

The transition from patriarchal society to modern society was marked by feudalism, and patriarchal ideas long existed after the State was well developed.

2. *Religion*.—A second important factor in the creation of social consciousness and, in turn, in the emergence of the State is early religion. As Gettell observes, kinship and religion were simply two aspects of the same thing. Common worship was even more essential than kinship in accustoming early man to authority and discipline and in developing a keen sense of social solidarity and cohesion. Those outside were regarded as strangers and even as enemies.

Patriarchal religion, says Jenks, was almost universally ancestor-worship, *i.e.*, the cult of deceased ancestors. Patriarchal man must have believed in the continual existence of his ancestor, because he continued to see him in his dreams. He offered him sacrifices and worship and adhered to all ancestral precedents lest he should offend the deceased in any way. Thus offering to the dead became a characteristic feature of patriarchal religion. The patriarchal meal gradually came to occupy the place of a religious ceremony. Patriarchal religion was rigidly enforced on all the members of the group.

Kinship and religion were so closely intertwined that the Patriarch, who later became the tribal chief, was also the high priest. He was the head of the family (later of the tribe), the guardian and interpreter of customs, high priest, and often

the magic man or the medicine man. Such a ruler was naturally looked upon with awe and reverence. He ruled with a rod of iron, and, in this, religion was his powerful ally. Despotism in these early days was not an unmixed evil. It strengthened the tribal organisation and accustomed men to authority and obligation. It was the best friend of progress and liberty in the early stages. All this explains how religion and polities went together for a long time and are not completely separated even to-day.

When the patriarchal tribe began to expand by incorporation or conquest, patriarchal religion was not quite adequate to meet the new situation, "in spite of adoption and the fiction of common origin, found in early states."\* It was at this point that nature-worship came to the rescue. Nature-worship, in the form of a crude animism, was present even in primitive times. But it now appeared in a somewhat advanced form and easily mingled with ancestor-worship and "served as a sanction for government and law. Religious and political ideas were little differentiated, and obedience to law and to authority rested largely on the belief in the divine power of the ruler and in the sacredness of immemorial institutions." †

3. *Political Consciousness*.—A third factor in the development of the State is the need that man felt at a very early time for order and protection, and along with it went the lust for power on the part of those who were strong and clever.

Once early man gave up his hunting and wandering habits and took to the pastoral and agricultural life, several changes took place. The population began to multiply. Contacts with neighbouring people increased. Wealth was accumulated. The idea of property took root. The economic life advanced. All this necessitated some form of organisation which would ensure internal order and give protection to per-

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\* Gettell. p. 45.

† Ibid.

son and property. Such an organisation received further support from the need that men felt for an authoritative body to regulate their social relations such as the family and marriage, as also from the need for concerted action for purposes of common defence and aggression.

The ambition for power was no doubt a strong motive in the formation of state-institutions. Military activity furnished the best opportunity for the resolution of such an ambition. In some cases at least "war begot the king." Earlier family organisations were gradually replaced by more purely political forms. Successful war leaders became kings and nobles, and society was stratified into classes. Power more and more passed into the hands of select classes who were claiming prerogatives and superior rights.

Thus kinship, religion, and the need for order and protection "contributed the organisation from which the state usually emerged."\* They necessitated some form of law and a government to enforce that law, and the State was the next step in this political evolution.

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\* Gettell.

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## CHAPTER IV

### THE ORIGIN AND EVOLUTION OF THE STATE (Continued)

#### THE EVOLUTION OF THE STATE.

We have so far concerned ourselves in the speculative theories regarding the origin of the State and the factors which have gone into the building of the early State. We now turn our attention to the evolution of the State in historical times. Here we are on more solid ground.

**(1) The Early Empires in the Orient.** Almost the first type of State which emerged from primitive and patriarchal conditions was the imperial State, particularly of the Orient. Patriarchal society did not have a large enough area of population to enable it to become a State. There probably existed loose alliances and confederacies of various tribes knit together by ties of blood, real or assumed. But these could not have produced the extended State. Conquest and domination were necessary before tribal man could accustom himself to larger loyalties and to political authority and obligation.

The warm and fertile plains of the Orient, watered by great rivers, and the plateaus of Mexico and Peru produced the earliest forms of civilisation and the earliest State. These were regions where production was plentiful with the least amount of exertion. People multiplied rapidly, and early passed from the earlier family and religious systems to the newer political order. The rapid growth of population and

the enervating climate of these warm regions led to the existence of a large servile class. Those who possessed surplus wealth, leisure, and power could easily domineer over the rest and establish despotisms. Social differences and caste distinctions came into vogue. From this State of affairs there soon arose vast empires—such as the Sumerian, the Assyrian, the Persian, the Egyptian, and the Chinese—all centering round Cities. The different parts of the empire were not closely knit together, except in the Persian empire, which attained a certain degree of unity and stability. These early empires were loosely organised, and their authority rested on fear and despotism. For the most part they were merely tax-collecting and recruit-raising agencies. There was no common purpose and no common loyalty. As soon as the ruling dynasty became weak, powerful rivals contested for rule and authority. No individual liberty or true political progress was possible. The early empire was thus an unstable institution. It was at best “a loose congeries of semi-independent States” and the imperial sceptre shifted “not only from dynasty to dynasty, but also from city to city. \* ” In spite of these shortcomings, the early empire performed a great service to political evolution in accustoming man to obedience and authority.

**(2) The Greek City-State.**—The second important stage in the evolution of the State was reached in Greece. Although civilisation arose later in Greece than in the Orient, it developed much faster. The country is peculiarly fitted by its physical environment for political growth and experimentation. It is a country broken up into numerous valleys and islands by the mountains and the sea. Its natural features are varied and moderate. There are no great mountains or rivers or other natural phenomena to paralyse human activity. The Greek religion and outlook were naturalistic and the people had no awe for their gods. Since nature was not so profuse as in the tropical countries, people looked to colonisation and trade.

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\* MacIver. *The Modern State*, p. 58.

The patriarchal clans took possession of small areas and built their village communities around hills which could be easily defended. Some of these clans were fused together by conquest, peaceful union, or ties of kinship. But they never developed a national unity. Local patriotism continued to the end.

In their self-governing and self-sufficient city-states, or rather city-communities (the phrase used by Mac Iver), the Greeks developed a variety of political organisations. These communities contained the principle of growth. Sparta alone remained conservative and maintained "a steady tradition of unbroken continuity in its government. In the other States the normal political evolution was from monarchy to aristocracy, from aristocracy to tyranny, and from tyranny to democracy." \*

The Greek was passionately devoted to his city-state. The only life which mattered to him was a life of partnership in the city. "Citizenship was a function, almost a profession." † The Greeks looked upon the city as an ethical institution. It performed multifarious functions. In fact, it was identical with the whole life of society. It was an all-inclusive partnership. The Greeks believed that man could not attain the highest life apart from the State. The Greek outlook was social through and through.

While the Greek city-state reached a very high level of political development and emphasised self-government and individual liberty, it had many serious drawbacks. It rested upon a foundation of slavery. Further, the Greeks could never invite and form a common whole. They never realised a common political consciousness. The city-states formed loose confederations, but nothing more. Frequent wars destroyed in turn the power of the leading cities. An all-inclusive partnership within the city meant an attitude of bitter exclusiveness towards other cities and the outside world. Greece, thus

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\* Barker : Greek Political Theory, ch. I.

† MacIver : The Modern State, p. 84.

weakened, fell an easy prey to Macedon and then to Rome.

**(3) \*The World Empire of Rome:**—Rome began her political career as a city-state, very much like the city-states of Greece. The city-state of Rome was formed by a union of several tribes or curiae occupying seven easily defensible hills in the fertile plain of the Tiber. At first this city-state was not of much consequence. But her central position and her location at the head of the only important navigable river soon led to her pre-eminence. Community of religious worship was a strong bond of union between the various tribes living within her borders. In early days, her government was monarchic. The king was magistrate, monarch, and high-priest all in one. The nobility known as the Politicians had a share in political authority. The landless, propertyless common people known as the plebeians had no share at the beginning, but acquired the privilege later on.

In early Rome, as in the Greek cities, the tendency was towards a more democratic form of government. About 500 B.C., monarchy fell and a republic was established with two chief magistrates, who later came to be called consuls. For two centuries following the change the patricians and the plebeians were engaged in a struggle for political control. The economic consequences of many wars intensified the struggle. Finally, the two fighting classes fused into one citizen body, having equal political and civil rights. In this process the government too underwent a change. A plebeian had to be chosen as one of the two consuls.

At this stage Rome began to look outside her own borders, with a view to annexing territories. In the realisation of this ambition, the geographical conditions of Italy favoured her, since Italy was better adapted for conquest and expansion than Greece. Rome began her development with the incorporation

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\* cf. Gettell : History of Political Thought, ch. III.

of the neighbouring Italian States, which had a greater or less degree of local independence. By 90 B.C., after the 'Social War,' a serious revolt of eight Italian tribes against Rome, practically all the peoples south of the Po were granted full citizenship. This citizenship of Rome was a much more flexible and adaptable system of rights than that of Greece. As MacIver notes, "from early times the Romans had the wit to distinguish between civil rights—rights of equality before the law—and political rights—rights of membership in the sovereign body." \* Some cities of Italy were given civil rights, but no political rights.

Soon after the conquest of Italy Rome destroyed Carthage, her only rival in the west, and became a great naval power. A large part of the fragments of Alexander's empire came under her control. By the close of the first century B.C. practically the whole of the entire civilised western world was united in a single political system.

An effective system of materialised administrative control was worked out to hold the empire together. The conquered territory was divided into provinces and over each province was set up a Roman official known as the pro-consul, who had full powers in civic and political affairs. The only check which restrained him was the possibility of impeachment at home on his retirement from office. In Rome itself the republican form of government was replaced by military despotism. The emperor became all in all. Popular assemblies ceased to have any important functions. The Senate still had a prominent position, but the emperor got control over it by having a dominant influence in determining its position. The emperor's decrees finally came to be recognised as law.

By the end of the second century Roman citizenship was extended to the provinces. All the members of the State were equally subject to the rule of the emperor. During this period

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\* MacIver : op. cit., p. 97.

the old theory that the ruler received his powers from the people gave place to the divine origin theory. Imperial authority came to be viewed as of divine origin. The emperor himself was worshipped as god for a time. Later, with the acceptance of Christianity as the State religion, the divine origin theory was interpreted to mean that the emperor was the agent of God's will on earth. Thus the ancient democratic city-State became the autoeratic world-empire. Emphasis was shifted from the Greek ideals of liberty, demoeraey, and local independence to the Roman ideals of unity, order, universal law, and cosmopolitanism.

It is to the lasting credit of Rome that she gave the world the first well-organised and well-governed State. Her rule lasted for five centuries in the west and for fifteen centuries in the east. The Catholic Church modelled her organisation after the pattern of the Roman imperial system. The idea of a universal empire haunted the minds of people throughout the Middle Ages. Roman law and Roman methods of colonial and municipal administration have come down to modern times. Rome's well-worked out ideas of sovereignty and citizenship and her methods in welding divers peoples into political unity are some of her monumental achievements.

In spite of these great achievements, Rome could not make her empire permanent and enduring. Among the causes that led to her decline and downfall were the sacrifice of individual liberty for the sake of securing unity, the soulless efficiency which characterised her administration, the moral depravity of the upper classes, devastating pestilences, the unsound economic basis of the empire, failure to make rules for the succession of emperors, religious disintegration, and the invasion of barbarian hordes. Though Rome fell on account of these and other causes, her influence (her name and memory) have been even more powerful in death than in life. Comparing the relative contributions and limitations of Greece and

Rome, Gettell aptly remarks "Greece—developed democracy without unity ; Rome secured unity without democracy."\*

**(4) The Feudal State.**—The downfall of Rome meant the death of the "State" in western Europe. A long period of confusion followed. The Teutonic barbarians who invaded Rome from the north were still living in the tribal stage. They had no idea of a strong central authority. They were lovers of local independence and individual liberty. Their kings were simply successful war chiefs. The freemen had a voice in all public affairs.

When such people came into contact with the Roman political system which was characterised by order, unity, and centralisation, conflict was the inevitable result. Out of this conflict feudalism arose as a compromise. It was a compromise between the clan type of society represented by the Teutonic barbarians and the imperial State type represented by the Romans. It is easy enough to deify feudalism and belittle its importance in the evolution of the State. It has been rightly said that it was not a system at all. But in the anarchic State into which society had fallen following the decline of Rome, it was feudalism which gave the people of Europe comparative peace and protection and preserved the machinery of the State. It marked the transition from the imperialism of the Roman world to the nationalism of the modern world.

**How Feudalism arose and what it meant.**—On the decline of the Roman empire, the vast territories of Rome fell into the hands of powerful nobles. Each of these nobles became an authority unto himself and created a community of his own around him by a process of "sub-infeudation" of land. The supreme lord parcelled out his land among the tenants-in-chief, and the tenants-in-chief among the tenants, and the tenants in turn among the vassals and serfs. Thus a hierarchy was built up on the basis of ownership of land. A rigid system

\* Introduction to Political Science, p. 59.

of classes was established and the "State" was swallowed up in the community. Services of various kinds, particularly military, were rendered to the immediate overlord, and the control that the supreme lord or king at the top of the social and economic ladder had over the vassals and serfs at the bottom of the ladder was indirect and remote. The loyalty of each class was in the first instance to the class directly above it. As a result of such limited loyalty, the idea of a sovereign power reigning supreme in a given territory remained foreign to the feudal period. In the place of a system of uniform and impartial law which the Romans had done so much to build up, there was a reversion to custom as law. Real political progress was impossible as long as feudal ideas prevailed. Yet feudalism was not synonymous with anarchy. It justified its existence by providing peace and protection to the people of Europe. It was based upon personal loyalty and contract. In its later stages, particularly in England where allegiance to the king took precedence of allegiance to the immediate lord it helped the growth of the national State.

Another institution which survived the confusion following the downfall of the Roman Empire was the Christian Church. Christianity began as a humble faith among the lower classes of society. But in the course of a few centuries it involved the ranks of the high and mighty, and about the year 337 A.D. the Roman Emperor, Constantine, was converted to Christianity. By the end of the fourth century it was the only recognised religion in the Roman world. It built its organisation on the Roman imperial model and when the Empire fell to pieces, it was able to step into its place and give Europe order and peace. During long periods of the Middle Ages, it was able to control the State and itself become a powerful temporal authority, holding in its possession considerable wealth, especially landed property. As Figgis remarks, "In the Middle Ages the Church was not a State: it was the State; the State or rather the civil authority (for

a separate society was not recognised) was merely the police department of the Church."

In feudalism the Church found a valuable ally, for it was in the interest of the political aspirations of the Church that Western Europe should be kept divided with no common political superior to offer resistance to its extravagant claims. So long as there were able Popes and weak kings and emperors and so long as the superstitious reverence of the people for ecclesiastical authority continued, authority prevailed. But from the beginning of the fourteenth century the papacy fell on evil days, and never regained the position of pride and authority that she occupied during the pontificates of Gregory VII (1073—85) and Innocent III (1198—1216). The Babylonish Captivity (1303—1373), during which time the Pope was kept as a captive in Avignon by French king and the Great Schism (1378—1415) which followed when there were two, and sometimes even three, rival Popes, greatly weakened the authority of the Church and diminished its prestige. The Protestant Reformation which came soon after practically ended the secular supremacy of the Church and the way was prepared for national monarchies.

**(5) The National State of Modern Times :—**The Renaissance and the Reformation are generally regarded as marking the beginning of the modern period. These movements quickened the life of Western Europe, which now entered upon a period of unparalleled expansion and conspicuous achievement. In the very nature of the case, feudalism could not have lasted long. It had a useful role to play so long as conditions were unsettled and there was general disorder and confusion everywhere. But once conditions became settled and the ethnic, linguistic, religious, and territorial bonds gave people a new sense of unity, feudalism had to give way to a superior order of society.

Even before the close of the Middle Ages several factors conspired to bring in the new day. The Holy Roman Empire,

even in the palmiest of its days, was little more than a ghost. It had no real authority behind it. National States were coming into existence in England, France, and Spain in spite of the so-called Empire and the sway of the Pope. Cities grew and commerce was developed. The pride of kings, mortified by the arrogant demands of the Popes, led to their breaking more and more away from Papal authority and making themselves masters in their own houses. In this endeavour the people gave them their loyal support, as they desired peace and security. They looked upon the king as the visible symbol of the national spirit which was beginning to capture their imagination. The use of gunpowder, the rise of national taxation, and the setting up of standing armies freed the national monarchs to a great extent from their dependence upon the feudal nobility. The Hundreds Years' War and the Wars of the Roses further weakened the authority of the feudal lords and diminished their political importance. By the close of the fifteenth century much of the feudal power was destroyed.

Thus on the eve of the Protestant Reformation the stage was well set for epoch-making political changes. The Reformers were primarily religious teachers. They waged a relentless war against the corruption of the Church, its false teachings, its secular authority, and its enormous wealth. They taught doctrines which had a profound effect not only upon man's religious life, but also upon his political relations. Some of these doctrines were the value and dignity of every human being, the importance of the individual conscience and individual liberty, and the right of the individual to have direct access to God without the intervention of the priest. Out of such teaching there arose in the political field the modern movements of individualism and nationalism. The two powerful conceptions of the Middle Ages—the universal empire and the universal church—received a death-blow.

The immediate effect of the teaching of the Reformers

was to strengthen the hands of national monarchs. All the great Reformers enjoined on their followers passive obedience to the State, and taught that "the powers that be are ordained of God." They held that political authority came ultimately from the will of God, and that the rulers to whom obedience was due ruled by divine right. Their teaching took root in England and in France and led to the Tudor and Stuart despotism in the former country and the Copetian absolutism in the latter. Louis XIV of France went so far as to say "I am the State." The general tendency of the Reformation teaching was to strengthen the hold of the monarchic principle in monarchic lands and the principle of aristocracy in aristocratic lands. "In both the effect was to strengthen absolutism in the political sovereign" (Dunning).

Such absolutism, however, did not remain unchallenged very long. With the growth of enlightenment and understanding and a realisation of their power and importance, the common people began to question the duty of passive obedience to governmental authorities and to demand more and more political rights and privileges. This meant a prolonged conflict between the king and the people for political control. In the transition from royal absolutism to democracy the Reformation idea of personal worth played a very important part. The common man acquired a new confidence in himself and realised the fact that government existed not for its own sake, but for the good of the governed. Thus, the ultimate effect of the Reformation teaching was to further the cause of individual liberty and democracy.

Royal absolutism was no doubt necessary to weld people together and to bring order and unity out of feudal disorder and disunity. But once that object was fulfilled, there was no reason for its continuance. The democratic movement started very early in England and its progress was on the whole gradual and peaceful. In France it meant a violent revolution.

In other countries, the monarchs generally yielded to the popular will and were content to remain as historic figureheads under a democratic government. The movement had taken such deep root and worked so satisfactorily that, till recently, the democratic national State came to be regarded as the final stage in the evolution of the State. Bentham, for instance, hoped to better "this wicked world by covering it over with Republics."

**(6) The World Federation:**—Undoubtedly a great deal can be said in favour of the Democratic National State. It would seem reasonable to suppose that every country with a well-defined natural boundary, having a homogenous and united people, should be allowed to govern itself and claim all the rights of a sovereign State, and that the foundation of such self-governing and self-determining national States was the only way to international peace and good-will. But the history of the last century has shown that such a policy inevitably leads to rivalry, competition, and even war. Colonial empires have well nigh destroyed the geographic and ethnic unity on which the national State is based. Scientific discoveries of recent years, greater facilities for travel and greater intercourse between people of the different parts of the world, international trade on a gigantic scale, and the world-magnitude of present day problems, all of which are causing "the shrinkage of the world," tend to break down narrow ideas of patriotism and national sovereignty and point the way to some form of world federation. Just what form this world federation will take, the future alone can show. However, a world government of some sort seems inevitable. H. J. Laski, an ardent champion of World Federation, believes that outside purely domestic concerns, settlement in terms of common rules for all the States is becoming an increasing necessity. He further holds that the sovereignty of the State is in the process of disappearance in international affairs because it has served its purpose there. "What the individual to-day

requires is not the concepts of Imperialism, but the concepts of Federalism."

*General Features of State Development.*—From a study of the evolution of the State, we are able to make certain broad generalisations. Gettell sums them up as follows\* :—

- (1) "As in the evolution of all organisations, the process has been from the simple to the complex." Government has become more complex and complicated than in early times. But at the same time there has been an increasing unity and inter-dependence of governmental organs. Different organs of the government perform different functions, but there is a fundamental unity underlying them all. The authority of the State which was uncertain and irregular at the beginning has now become more definite and regular, so that the chances of despotic or capricious rule are steadily decreasing.
- (2) "The development of the State has been accompanied by the growth of political consciousness and purposeful action." The first States came into being not through the deliberate action of man, but largely through natural causes. Man being a social animal, the organisation of some form of governmental authority to hold society together was almost natural with him. But with the evolution of the State and increasing intelligence, man was able to discover reasons for the existence of the State and mould the State according to his ideals. State authority came to be based on a more rational and stable foundation. The spread of political consciousness to the people led to the formation of democracies.
- (3) "In general an increase in the area and population

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\*Introduction to Political Science, pp. 65—67.

over which the sovereignty of the State extends, characterises the evolution of the State." "The advance in political ability, making possible the successful working of governmental organisation in large areas, the development of communication and transportation, and the improvements in economic conditions, enabling a given area to support a dense population,—all tend to increase the size of the State and the number of its citizens."

(4) "State development has been marked by the separation of politics from some institutions and by increasing governmental interference in others." Religion and the State evolved together in the early stages. But at the present time, in all civilised countries, the Church and State are almost entirely separate. There is an increasing realisation of the fact that since religion and morality, are primarily of an inward character, they should be subjected to the least possible amount of State control. The State should do all that it can to make the religious and moral life possible for the individual. But it cannot and ought not to undertake the direct promotion of religion and morality. Similarly, the personal life of the individual is becoming more and more free from State supervision. It is generally admitted that the State ought not to interfere with such matters as domestic life, personal likes and dislikes in such matters as food, clothing, fashion, &c., so long as such freedom is not contrary to public order and safety or laws of decency.

On the other hand, there is an increasing demand for State action in the sphere of public welfare, where individuals cannot or will not help themselves. Thus education, sanitation, the care of defectives, the punishment and prevention of crime

are justified by all modern States. The general tendency to-day seems to be in the direction of extending State action, so long as it is not the fist of the executive, but has behind it the united support of the people. However dangerous in the future the zeal for making laws may become, men have not yet wholly lost their traditional hatred of executive power or their trust in representative assemblies."

(5) "In many ways the most significant general feature of development is the method by which the compromise between State sovereignty and individual liberty has been worked out." Rigid enforcement of customs and despotic rule were necessary in the early days to make primitive man understand the importance of law and authority. But after this purpose was accomplished, they became rather a hindrance to individual liberty and the unity of the State. The Oriental Empires kept up a despotic rule even after it had served its purpose. The Greek city-states developed individual liberty, but sacrificed unity. Rome perfected her organisation, but crushed freedom. It fell to the lot of the Teutons to work out a compromise between individual liberty and State sovereignty in the form of the modern democratic national State. "By the principles of local self-government and representation, an organisation which secures unity in common affairs without sacrificing individual liberty is made possible, and democracy over large areas is at last secured." The problem of the future is to keep under changing conditions the balance between sovereignty and liberty, "and no two modern States are agreed, as to what is the proper adjustment, or how best to secure it."

**Select Readings.**

Dealey, J. A.—*The Development of the State*, CH. II.

Fowler, W. W.—*The City State of the Greeks and Romans*,  
Chs. IV.—XI.

Gettell, R. G.—*Introduction to Political Science*, CH. VI.

    "    "  —*Readings in Political Science*, CH. VI.

Jenks, E.—*History of Politics*, Chs. VIII—XIV.

    "    "  —*Law of Politics in the Middle Ages*.

MacIver, R. M.—*The Modern State*, Chs. I—IV.

Sidgwick, H.—*The Development of European Polity*.

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## CHAPTER V.

### THE SOCIAL CONTRACT THEORY OF HOBBES, LOCKE, AND ROUSSEAU.

Even those who possess only an elementary knowledge of Political Science know that the names of Hobbes (1588—1679), Locke (1632—1704), and Rousseau (1712—1778) are inextricably woven together with the social contract theory. Hobbes and Locke in England and Rousseau in France gave this theory its final form. We shall briefly deal with the views of these writers in order to understand the full significance of the social contract theory.

#### A.—The State of Nature and the Law of Nature.

*Hobbes.* Hobbes presents a gloomy view of the state of nature. Rousseau, in his essay on *Inequality*, pictures this state to be a period of idyllic happiness, although he modifies this view in his later *Social Contract*. Locke takes a middle position. In other words, Hobbes's view of the state of nature is that it is unbearable, Locke's view is that it is inconvenient, while Rousseau's view is that it is a period of peace and blessedness. According to Hobbes, life of man in the state of nature is one of constant warfare on account of the essentially selfish nature of man. In his own forcible words, the life of man, is "solitary, poor, nasty, brutish, and short." "Every man is enemy to every man." Man seeks pleasure, and to insure pleasure he wants power over others. But he is not able to assert power over others, since, according to Hobbes, the bodily and mental powers of natural man are nearly alike. Hence men stand in natural fear of each other. From this state

of fear there arises a state of constant warfare. This does not mean that man actually fight with one another all the time, but that the will to contend is ever present. In such a state there is no place for industry. "Kill whom you can, take what you can" is the order of the day. There is no law to constrain such actions. Hobbes is not guilty of assuming that such a state of nature is one from which men actually started. All that he is concerned to show is that it is a state into which a country may lapse when there is no settled government for any length of time.

*Laws of Nature.* The Social Contract writers assume that there were laws of nature in the state of nature. But they are not agreed as regards the nature or basis of these laws. To Hobbes, laws of nature are laws of prudence or expediency, while to Locke they are laws of morality implanted in the human conscience. Hobbes plainly tells us that one's natural rights are one's natural powers. In the natural state, he says, there can be no morality and no consciousness of obligation. These are possible only after the establishment of law and government. Until there are laws all actions are equally good and right. The "right of nature" is "the liberty each man hath to preserve his own life." The first law of nature is that everybody should aim at securing peace. The second law is that man should be willing when others come to the same agreement to give up his natural rights. The third law is that men should keep their contracts. The fourth and the last law is that men should show gratitude or return beneficence for beneficence.

*Locke.* The views of Locke on the state of nature and the laws of nature are very different. The state of nature to him is not a state of war. It is "a state of peace, goodwill, mutual assistance, and preservation." It is a state of liberty, but not of licence. The majority of people in this state obey the law of nature, i.e., the law of inward morality. But there are a few recalcitrants who cause inconvenience to the

rest. Consequently the peaceable people are obliged to take the law into their own hands, and this is always irksome to the average man who wants to be left free to mind his own business. Besides, men are not good judges in their own cases. Thus the only disadvantage of the state of nature is that there is in it no recognised system of law and justice. To make good this deficiency men abandon the state of nature and enter into a civil society by means of a contract. This view of Locke's is far more unreal than that of Hobbes.

*Rousseau.*—Rousseau's picture of the natural man, in his *Discourse on Inequality*, is that of a "noble savage." Men in the state of nature are equal, self-sufficient, and contented. They live a life of idyllic happiness and primitive simplicity. But, with the rise of civilisation, inequality comes into being. Arts and Sciences arise and private property is established. Division of labour, too, comes into existence. All this necessitates the establishment of civil society. The state is thus an evil, but is rendered necessary by the inequalities among men. In his "Social Contract," Rousseau takes a modified view of the civil state and believes that the advantages of the civil state are greater than those of the natural state. In his own words, "What man loses by the social contract is his natural liberty and an unlimited right to all which attracts him and which he can obtain ; what he gains is civil liberty and the property of what he possesses. To avoid error in the reckonings we must carefully distinguish natural liberty, which has no bounds but the powers of the individual, from the civil liberty which is limited by the general will ; and possession, which is only the effect of force on the right of the first occupant, from property, which can only be founded on a positive title."\*

### (b) Nature of the Contract.

*Hobbes.*—Hobbes posits one contract—the original or social contract; Locke posits two contracts—the social and

\*Book I, Chap. VIII.

governmental; and Rousseau posits one. While Hobbes speaks of a contract, it is no consequence to him whether government really originated in the form of a contract or not. He is more or less aware that it is an historical fiction, which conveys a philosophical truth. It is simply a device to show that government is not mere force, but in some sense rests on the will of the people. Locke, on the other hand, regards the contract as an actual historical fact. He thinks that there was a time when people did meet together and set up a government.

The contract, as conceived by Hobbes, is between the people themselves who emerge from a state of nature. It is not between the people on the one hand and the sovereign on the other. It is a contract among the people themselves to set up a ruler. It is "as if every man should say to every man, 'I authorise, and give up my right of governing myself to this man or this assembly of men, on condition that thou give up thy right to him, and authorise all his actions in like manner. ' "\*

It is an absolute surrender of all of one's natural rights to the sovereign, although Hobbes does make some qualifications later on. The sovereign himself is not a party to the contract, but is a result of it. He is absolute. Once powers are conferred on him by the people, they cannot be withdrawn from him. Therefore, people have no right of revolution. The contract which is responsible for the institution of civil society is equally responsible for the establishment of government as well, for Hobbes makes no distinction between the state and government. The consequence of positing one and only one contract is that when a government is overthrown, the state also goes to pieces and society returns to anarchy, which is an illogical position to take. Locke corrects this mistake by positing two contracts.

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\*Leviathan, Part II, Ch. 17.

*Locke*.—By a first contract civil society is set up and by a second contract people get a government. The natural inference is that the first contract is among the people themselves and the second between the people in their corporate capacity, on the one hand, and the ruler on the other. To Hobbes, as seen already, it is the setting up of a government that brings civil society into existence. To Locke setting up a government is a secondary transaction and the dissolution of the government does not mean dissolution of civil society. All that it means is that society will have to set up another government in its place. According to Locke, the surrender of natural rights is not complete. People give up certain of their natural rights to a common authority in order that the remaining rights may be kept intact. When the ruler fails to maintain these rights, people are justified in overthrowing him and setting up a new government. In this way, Locke makes his theory the basis of limited monarchy, his object being to uphold the Bloodless Revolution of 1688. To Locke, then, the contract is a limited bargain. Thus, in the chapter on property, he says that the government should take only what is necessary to carry on its business. It has not the power to take anything more without the person's consent. This is quite an unreal view of government.

*Rousseau*.—According to Rousseau the contract is between the individuals in their personal capacity and the individuals in their corporate capacity. A, B, C, D, etc., surrender all their natural rights to the collective whole A, B, C, D, etc. No one is a loser ; on the contrary, everybody is a gainer, for when any one is attacked the whole society comes to his rescue. Each person in the state possesses an equal and inalienable portion of the sovereignty of the whole. In Rousseau's own words "each of us puts his person and all his power in common under the supreme direction of the general will, and in our corporate capacity we receive each member as an

indivisible part of the whole." "Each man giving himself to all, gives himself to none," and "remains as free as before." Rousseau does not believe that the contract was an actual historical occurrence.

**(c). Sovereignty.**

*Hobbes*.—Hobbes holds that men in the state of nature are simply a multitude of unconnected and warring individuals. Hence the problem which faces him is, how can a multitude of such individuals form a single body with a single will? The solution to it he finds in the social contract, by virtue of which a sovereign is set up with a *single will*, who will govern society continually. This single will takes the place of the individual wills and at the same time represents them, in accordance with the terms of the contract.

As to the *way* in which the sovereign "represents" the people, Hobbes avails himself of the legal distinction between a natural person and an artificial person. A corporate body endowed with rights and obligations is called an artificial person, or *persona ficta*. Such a body can only act through an agent or representative who represents the whole body. Hobbes calls this agent or representative the artificial person. Applying this idea to the social contract, Hobbes says that if the separate wills appoint one and the same person as their agent (and Hobbes maintains that this is what they do), we get a single will. The agent speaks and acts for the many wills. In the second place, we may call this agent a *feigned* person. What is done by my agent is done by myself. I am responsible for everything that he does. I must accept all liability and responsibility. Likewise, whatever the sovereign does the people do in him, and therefore he cannot act unrepresentatively. This is the only way, according to Hobbes, in which society can hold together. "For it is the unity of the representer and not the unity of the represented, that makes the person one." The unity resides in the common agent or representative and not in the individuals. Thus we find that

in the theory of Hobbes, there is a *substitution* of one will for many wills ; but when we come to Rousseau, we find that there is a *transformation* and *transmutation* of many wills into a common or general will.

The important point to note is that with whomsoever sovereignty rests, it must be absolute, indivisible, and inalienable. It is the setting up of a sovereign that creates society. Sovereignty is the supreme power on earth. In the sovereign consists the essence of the commonwealth. The sovereign, says Hobbes, may be one, few, or many, although Hobbes's own preference is for the one. The advantages which Hobbes points out in favour of monarchy are—

- (a) that the private interest of the monarch is likely to be identified with the general interest of the people,
- (b) that monarchy can work much more conveniently than other types of government, and
- (c) that a monarch is liable to remain fixed in his ways.

All these arguments have no doubt some amount of force. The practical purpose of Hobbes was to justify royal absolutism. But in doing this he received no thanks from the other supporters of royal absolutism in his day, who wanted the king to rule by divine right. They argued that if the king's authority was not independent of the people's will, the same people who give him absolute authority could hand over that authority by means of another contract, to a few or to many. Nor would the opponents of monarchy have anything to do with Hobbes, because they wanted to limit the king's power.

The sovereign, says Hobbes, is the supreme law-maker. He cannot do any injustice to his subjects because he represents them. He may commit moral wrong, but he cannot do any legal injustice. He is responsible for his actions to God alone. This is very much like the doctrine that " the king can do no wrong." The sovereign, being the ultimate law-maker, is above the law. He cannot bind himself by any promises. He has the supreme commandership of the army.

He is even the judge of the doctrines and beliefs allowed to be taught in the community.

*Locke*.—In Locke there is confusion of all the forms of sovereignty. A recent writer remarks “the more closely Locke’s treatise is studied, the more clearly will it be seen that it is an attack directed far more against the idea of sovereignty, than against the claims of absolute monarchy.” The traditional view of sovereignty is that it should be absolute and indivisible. This view we find in Hobbes, Austin, and many others. But, according to Locke, sovereignty is neither absolute nor indivisible. It seems to be divided between the people on the one hand and the rulers on the other. As seen already, the original contract is an agreement among the people to put an end to the state of nature and to create a civil society in its place. This original contract requires the consent of every member of society. The consent may be given tacitly or explicitly. Residence in a country means tacit consent. As a result of the second contract, the rulers are vested with certain powers and if they fail to carry out their requirements, they may be dismissed and others appointed in their place, without the reversion of society to the state of nature.

Locke’s theory of sovereignty means in practice that the people have sovereign authority in reserve, but that the actual power is exercised by the government, i. e., by the king and the parliament as far as England is concerned, and that when the government violates its trust it becomes necessary for the people to withdraw their power from the government. Thus the people are in the nature of a sleeping partner. They let the government carry on the sovereign authority within certain limits till it begins to abuse its power, and when it does that the sovereign people rouse themselves from their slumber, overthrow the existing government, and set up another government in its place. There is always the residual power in society to overthrow a

government, but there is no constitutional way of doing it. So in the last resort it is just a case of revolt or rebellion under any form of government. Locke's theory justifies revolution when it is the act of the whole community. But the difficulty is in determining when it is the act of the whole community. As T. H. Green points out, Locke does not propose to carry out his own theory in the particular case of the reform of the English representative system.

The serious error in Locke's theory of sovereignty is in his placing legal limits on the power of the sovereign. For instance, he declares that the legislature *cannot* rule by extempore decrees. The words "ought not to" would be preferable, because it is generally admitted that the legal sovereign has competence to use arbitrary power in taking a person's life or property. Yet Locke says "cannot", and this results in serious confusion. It is a kind of error that pervades declarations of rights. He thinks of natural rights apart from society.

*Rousseau*.—As seen already, according to the terms of the contract, A, B, C, D, etc. surrender their natural rights to the collective whole A + B + C + D etc. Here we have the foundations of popular sovereignty and democratic government. Each citizen has a share in the sovereign power, and each is also a subject in that he has to obey the law, which he himself has made as sovereign authority. Rousseau adopts the view of Hobbes that sovereignty is absolute, inalienable, and indivisible. While Hobbes locates it in the wrong place, viz., in the monarch, Rousseau places it in the body politic as a whole. From Locke, Rousseau takes over the distinction between sovereignty and government, but does not allow government as much authority as is allowed by Locke. To Rousseau government is only a derivative authority, always subject to the will of the sovereign people. His sovereign is an ever-active or vigilant sovereign, unlike that of Locke; he does not wait till things are carried to an excess by the government before he rouses himself to action.

The greatest contribution made by Rousseau to political theory is his doctrine of the general will. The general will is the only manifestation of sovereignty. It is vested in the body politic as a whole. The doctrine of the general will is discussed in the note at the end of this chapter.

**(d) Type of State and Government.**

As regards the type of state, Hobbes's theory favours royal absolutism, Locke's theory favours constitutional government or limited monarchy, while Rousseau's theory results in popular government, and particularly in direct democracy.

In their conception of government, too, the three writers differ fundamentally. Hobbes makes no distinction between State and government. To him the *de facto* government is always *de jure*. Locke and Rousseau, on the other hand, distinguish between State and government and between *de facto* and *de jure* governments. As said already, according to Hobbes, dissolution of government means dissolution of the State and return to primitive anarchy, which is absurd. Locke holds that the sovereign people have the right to choose their government and change it when it becomes unsatisfactory. Government is a trust or moral responsibility. To Rousseau, government is simply an agent or a "living tool" of the people. It is not the result of a contract. It has only limited authority and this authority is derived from the sovereign people. It has no original power. Its power can at any time be recalled by the sovereign will. The subordinate character of government is brought out by Rousseau in his conception that in their periodical assemblies people decide upon two questions.

(1) Do we want the present form of government to  
• continue?\*

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\*cf. Social Contract Book III, Chap. 18.

(2) If we do, do we want the present personnel to continue?

As regards the powers and functions of government, Hobbes gives absolute powers to the government which is also the sovereign. Locke gives the government only limited power, for according to his theory of the contract, people surrender only as much of the natural rights as is necessary to secure the benefit of civil society. Again, Locke distinguishes between the legislative and executive parts of government, which Hobbes had failed to do, and makes the legislative the supreme part of government. Hobbes makes order and security all important. Locke says that government should not only keep order, but govern well. The ruler should rule for the welfare of the subjects. Here Locke makes a definite advance upon Hobbes.

According to Rousseau, the business of government is only executive. Legislation is to be in the hands of the sovereign people. People cannot part with the power to make laws without curtailing their sovereign authority. The essence of legislation is *will* and *will*, in its very nature, cannot be transferred or represented. On this ground Rousseau attacks representative government and makes a powerful plea in favour of direct democracy, such as that which prevailed in the small city states of Greece. In his own words, "Sovereignty, for the same reason as makes it inalienable, cannot be represented; it lies essentially in the general will, and will does not admit of representation; it is either the same, or other; there is no intermediate possibility. The deputies of the people, therefore, are not and cannot be its representatives." \*

Thus, according to Rousseau, the body politic has the will and the executive carries out the will. But this distinction is incapable of being stretched very far. For, if pressed

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\* Book III, Chapter 14.

too far, it would mean that the executive has no will at all, which is a clearly impossible position. The executive is not simply like a policeman who carries out orders. In every country the executive is given a considerable amount of discretion. Therefore the executive does have a share in the general will. Conversely, people not only make laws but also say how these laws should be executed and by whom they should be executed. Thus they have a share in the execution of their will as well. The conclusion to which we are driven is that while we can draw a theoretical distinction between will and the execution of will, it cannot be applied in detail. It is well to distinguish between the executive and legislative, but we cannot consign the executive to such a subordinate place to which Rousseau consigns it.

A second distinction which Rousseau makes between the sovereign people who form the legislative and the executive, which is the government, is that the former should concern itself with what is *general* and the latter with what is *particular*. This point of view is open to several difficulties. It is obviously difficult to draw a sharp line between what is general and what is particular. Even if we can say that a matter is general if it concerns the whole community equally, and is particular if it concerns a particular class or person, our difficulty is not solved by any means. In the modern state practically every piece of legislation is of a "*particular*" kind. There is hardly anything which concerns the whole community equally. Therefore if Rousseau's distinction between general and particular measures is to be followed strictly, we shall be defeating Rousseau's very purposes in making the sovereign supreme. Instead of making government a subordinate authority, we shall, in practice, make it a supreme body. Moreover, the setting up of a government itself is a "*particular*" act, and the people have no right to it. Rousseau's distinction is capable of application to small city states only.

**(c) Individual Liberty and Theory of Rights.**

Hobbes, on the whole, adopts the legal theory of rights; Locke bases his teaching on the natural theory of rights; Rousseau derives rights from membership in society and thus paves the way for the idealistic or personality theory of rights.

In Hobbes's theory the subject has all those rights which the law allows him. Wherever the law does not put a restraint, the subject retains his natural right. That does not mean that the sovereign's power over life and death is superseded. The sovereign can step in at any time and limit the liberty of the subject. The subject has power wherever the law does not regulate. In Hobbes's thinking, authority and liberty are opposed to one another.

According to Hobbes's view, there is no limit to what the sovereign may command, although there is a limit in extreme cases to the individual's obedience. This is in the very nature of the contract. The sovereign power was established for the security of life and happiness.

- (i) Therefore, if the sovereign assails the individual's life, the whole value of submission disappears. This is a paradoxical position. Even if the individual has been justly condemned, he is justified in trying to save life. It is only when his own life is assailed that the individual has the original right of escape. In the case of another, he may interfere, but not do more.
- (ii) In certain cases, the individual may refuse to serve as a soldier, because the contract was formed to secure his life.
- (iii) As soon as the sovereign becomes incapable of maintaining his authority and providing the individual protection, the contract is dissolved. All this shows the rigorous logic that Hobbes employs in building up his theory. Except in these three extreme cases, the authority of the sovereign is absolute.

When we come to Locke, we find that he makes government depend upon the consent of the governed. The individual has all those rights which he has not surrendered to the state. The state exists mainly to protect life and liberty. Yet Locke so qualifies popular rights as to reduce them to nothing.

According to Rousseau's theory, the individual is as free in the civil state as he was in the state of nature (if not more so) because he does not surrender his rights to any outside person. He surrenders them to himself and others who form the body politic. The problem, as stated by Rousseau himself, is "to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before." The solution to the problem, Rousseau finds in the social contract, according to which "Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole."

Thus we see that, according to Rousseau, man is a free person in the civil state. Whatever restrictions there may be are restrictions which he places upon himself. He obeys a self-imposed law, and this is not a denial of freedom. "Obedience to a law which we prescribe to ourselves is liberty."

The only criticism that we wish to offer of this view of freedom is that Rousseau assumes that a complete democracy means complete freedom. Experience shows us that this need not be the case necessarily. Rousseau overlooks the possibility of the tyranny of the majority, which J. S. Mill greatly apprehended in modern democracies. His contention that where general will is present, the individual may be "forced to be free" may easily become a synonym for the tyranny of the majority. In spite of this criticism, we have no hesitation in saying that in Rousseau we find one of the best

interpretations of freedom which serves as a key to the central problem in political science, viz., the problem concerning the relation between social authority and individual obligation.

### Truth in the Theories of Hobbes, Locke and Rousseau.

*Hobbes*.—The theory of Hobbes as a whole is very consistently developed. Once we grant his premises, his conclusions necessarily follow. Hobbes is an acute thinker. His chief contribution to political theory is his doctrine of legal sovereignty. The chief defect is that he does not supplement legal sovereignty by political sovereignty. Modern writers recognise the truth that at the back of the legal sovereign, and superior to it, is the political sovereign or the will of the people. Hobbes is mistaken in identifying the will of the State with the will of the *de facto* ruler. Such identification makes it difficult for him to distinguish the State from government. In fact, he goes so far as to say that the State is dissolved on the death of a ruler.

It may be argued that the theory of Hobbes allows no liberty to the individual and leaves the individual to the mercy of the ruler. According to this theory, the individual should wait until his life is in danger before he refuses to obey the sovereign. Advocates of the rights of the people may say that whenever the sovereign acts in a tyrannical way, paying little attention to people's welfare, the 'right of resistance' should be asserted. In reply to this argument it must be said that, even on Hobbes's own grounds, whenever the government is badly carried on, the contract should disappear. But what is much more important is that Hobbes makes us see the fundamental necessity of a strong government. He realises the danger of allowing the 'right of resistance' too soon. The loyal citizen should ask himself, is the case one in which it is wise to risk civil war and bring about anarchy? Whenever resistance to government is in question, it may mean civil war. People in resisting may start out without any idea of civil war, but may be driven into it. Once resistance to government is started

there is no knowing where it will stop. It is perhaps more important that a government should be strong, than thoroughly just. Security and peace are more important than occasional acts of injustice. Any kind of resistance is liable to weaken the government.

Speaking of the theory of Hobbes in general terms, the following points may be made—

- (1) For thinkers like Hobbes who start with absolute individualism, it is difficult to get a real insight into society. The starting point of Hobbes is defective. He assumes that man is essentially selfish, and that he is actuated solely by the pleasure-pain motive. This is false psychology. Plato, on the other hand, starts with the right assumption that the individual is not self-sufficient and that he has no meaning or significance apart from society. In Hobbes the only common element which unites people is their common fear of anarchy. So he is compelled to put the unity of society apart from the people in the will of the sovereign.
- (2) Hobbes claims that the sovereign is the 'representative' of the people. But the term 'representative' is not used in its ordinary sense. There is no guarantee that the supposed representative sovereign will really represent the people, i. e., will act for their public good. Hobbes's answer would be that we cannot limit the legal power of the sovereign, because he is the supreme law-maker. But the question is how to constitute the legal power of the sovereign so as to have a guarantee of good government. Concentration of power would no doubt make the government efficient. But what is needed is a compromise between concentration and security from oppression.

(3) Fundamentally a government is representative if it gives the truest expression of the needs of the people. It is quite possible for an absolute government to be representative of the people, e. g., the government of the Antonines. Popular election is not necessarily the most fundamental characteristic of representative government.

*Locke*.—Locke is the philosopher of the English Revolution of 1688. His *Second Treatise on Civil Government* was very influential historically. It throws a great deal of light on the ideas of men during the Revolution. It is a political pamphlet rather than a scientific treatise on political theories. It is not so closely argued as Hobbes's *Leviathan*. The central idea in Locke's theory is that the sole function of the government is to satisfy the needs of the people. If a thing works for the public good, Locke does not care much about philosophical consistency. Hobbes makes order and security all-important. Locke says that the government should not only keep order, but should also govern well. The ruler should rule for the welfare of the subject. All this leads Locke to recognise the existence of political sovereignty, although he does not fully understand the implications of legal sovereignty. In bringing out the difference between Hobbes and Locke with regard to this point, Gilchrist observes: "Hobbes gives a theory of legal sovereignty without recognising the existence and power of political sovereignty: Locke recognises the force of political sovereignty but does not give adequate recognition to legal sovereignty."\*

*Rousseau*.—

(1) Rousseau retains the language of the contract. But his ideas often surpass the ideas of the contract theory.

(2) Rousseau combines the best elements in the theories of Hobbes and Locke.

From Hobbes he takes over the idea of sovereignty as absolute, inalienable, and indivisible, and from Locke he borrows the idea of public good as the test of a good government. The combination of these two ideas results in the doctrine of the general will. Unlike Locke, Rousseau is not content with insisting merely on the good of the people. He wants the control of the people as a whole. "Thus, in Rousseau's hands the theory becomes fundamentally democratic and the claim is made that the people as a whole shall rule in fact as well as in name." \* "It was Rousseau, above all, who first made positive democracy a live doctrine in the world of politics." \*

#### Note on the Doctrine of the General Will

The doctrine of the general will has played a very considerable part in recent political discussion. To some thinkers it is a meaningless, if not a dangerous, doctrine. To others it is the corner-stone of democracy and of political philosophy.

In order properly to understand the conception of the general will, it is necessary to go back of that conception and begin with the distinction between "actual will" and "real will". At the very outset, it must be said that the terms "actual" and "real" are used in a technical sense in order to convey two different ideas. Therefore, to use the terms interchangeably, as we do in popular conversation, is not fair. L. T. Hobhouse, in his 'Metaphysical Theory of the State', is guilty of this confusion. He virtually says, what is actual is real and what is real is actual.

Those who use the terms in the technical sense and make the distinction serve as a basis for the conception of the general will avail themselves of the ever-present conflict that goes on in man between 'I' and 'Better than I'. They use the term the 'actual will' to describe man's impulsive and

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\* Cole, Page 60.

† Ibid.

unreflective will. It is my will from moment to moment. It does not take into account life as a whole. It considers self-interest but does not consider it in relation to the well-being the community at large. It is the individual's rebellious will, his 'transitory' or 'trivial' will. It is narrow and self-contradictory. If I am a reasonable being at all, I try to free myself from this 'actual' will, however intense it may be, and bring myself under the subjection of my 'real' will. My 'real' will expresses my 'true freedom'. It is my 'constant' will, not in the sense of being 'permanent' merely, but in the sense of giving me abiding satisfaction. It is a will purged and purified of some at least of its selfishness. It is my 'good' will. It no doubt takes self-interest into account, but it duly subordinates it to a common interest or common good. It is not satisfied with the gratification of this or that particular desire. It takes into account life as a whole. It is a reasonable will. It expresses itself in the harmony between the individual and society. It is never fully present in any individual.

Hobhouse is a vehement critic of the above distinction between the 'actual' will and the 'real' will. He claims that if the real will were worked out it would be so remote from anything that we know that we would not be able even to recognise it. We do not agree with this criticism, for it treats 'real' will as a mere ideal conception which exists in the realm of abstraction alone. The fact that we constantly criticise ourselves either by means of our reason and conscience or by means of experience (by the method of trial and error) shows that the distinction is a valid one. By making this distinction, we do not mean to suggest that the 'actual' will is merely illusory, as Hobhouse insists that it should. All that it means is that it is incomplete. It needs to undergo revision. Hobhouse quibbles with words and says that my will at any time is my 'real' will. This is not fair to Bosanquet and other idealists, who use the terms "real" and

“actual” in a technical sense. Hobhouse makes an absolute gap in a man’s life. He splits up one’s acts as if they had no relation to one another. Despite what Hobhouse might say, the ‘real’ will is present to a substantial extent in the average citizen, although we admit that in its fullness it is not complete even in the best of us. The mere fact that a certain desire of mine is intense does not make it ‘real’. What makes it ‘real’ is its conformity to the common good, of which the individual good is an intrinsic part. The average man’s life is a mixture of the ‘actual’ and ‘real’ wills, with a more or less steady progress towards the real.

It is upon the above conception of the “real” or “good” will that philosophers have built the doctrine of the general will. General will may be defined as the sum total, or, better still, an organisation or synthesis of the “real” wills of the individuals comprising society. Bosanquet defines it as “the will of the whole society *as such* or the wills of all individuals *in so far as* they aim at the common good.” It is the common consciousness of a common end or good. It is the most fundamental of Rousseau’s political concepts, although his ideas on it are not always clear. For the original contract which brings civil society into existence, Rousseau thinks that unanimous consent is necessary; but after that general will is enough. The term “general will” suggests two ideas to him—the numbers voting and the common interest which it expresses. In one place he says clearly that common interest is more important. To quote his own words, “what makes the will general is less the number of voters than the common interest uniting them”.\* Yet there are times when he comes dangerously close to identifying general will with a numerical majority. However, it is on the side of common interest or general good and not on the side of numbers, that Rousseau’s view becomes fruitful.

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\* Book II, Chap. 4,

All this means that general will is not identical with majority vote or public opinion. So long as genuine public interest is present, general will may be expressed by the votes of a minority, and even by the vote of a single person. For majority opinion may at times be little more than collective selfishness. Nevertheless, we are justified in saying that majority opinion is more likely to be general than the will of a single person or a selected class of persons. It is a question of probability. Thus it is that the doctrine of the general will in practical terms leads to the democratic form of government. A democratic organisation is likely to be more truly expressive of the general will of the community than an aristocratic or a monarchic organisation. But even in an aristocratic or a monarchic organisation, so long as society holds together and there is no violent conflict, general will may be said to be indirectly present.

### **How General Will is generated.**

In any society, according to Rousseau, we start with what he calls "the Will of All", i. e. the particular wills of the members of society. Each member of society looks at any public question before him from his own particular angle. But if it is a decent type of society with the spirit of citizenship present in it, the selfish elements in the wills of the individuals cancel one another out; and as the result of such mutual cancellation we eventually get a general will. Thus we start with the "Will of All" and arrive at a "General Will." This does not mean that the general will is simply a compromise, or the lowest common denominator. It is the expression of the highest in every man. It is the spirit of citizenship taking concrete form and shape. The decisions of a general will are like the decisions of an ideal committee, which are not compromises, but the highest expression of the best in each member. As a result of discussion and deliberation, every body's will becomes modified, purified, and enlarged.

Such a general will is, according to Rousseau, the only

manifestation of sovereignty. When sovereignty acts for the common interest, it is the exercise of the general will. So long as laws are in the common interest, they are an expression of the general will. General will is the key to self-government. When it is in operation, the individual can be "forced to be free". In such cases, the individual is forced out of a lower level of living and thinking, and is freed to a higher level of living and thinking. It is like the "freedom" of a man who is forcibly turned back from walking over a dangerous bridge, the peril of which he did not realise, or of a man who is constrained from contracting himself to a life of slavery.

### Characteristics of the General Will.

The first characteristic of the general will is its *unity*. The general will cannot be self-contradictory, because it is a reasonable will. It does not exclude variety. It makes for unity in variety. "It makes and preserves the unity of the national character, and issues in those common qualities which we ought to expect to find in the citizens of a given State".\*

Secondly, the general will is characterised by *permanence*. It is to be looked for directly neither "in the tempests of popular feeling nor in the vagaries of statesmen." It is to be sought in the character of the people. It is "more permanent than any particular act or movement in which it finds expression".†

Thirdly, the general will is always a *right will*, because it always tends to the welfare of the whole. It aims at what is right and best under any given circumstance. This does not mean that it is infallible. As Rousseau points out, the will is always sound, but the judgment guiding it may be deficient. It may make errors of judgment, but cannot be morally

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\* Lord. *Principles of Politics*, page 140.

† *Ibid.* page 140.

vicious. People start out with the right aim, all through they are liable to be led astray. In Rousseau's own words "of itsclf the people wills always the good, but of itself it by no means always sees it. The general will is always in the right, but the judgment which guides it is not always enlightened."\*

### **Criticism.**

The doctrine of the general will has been subjected to several lines of criticism.

- (1) The conception is said to be too abstract and narrow, unlike anything that we know in the world of practical affairs. If the general will is not to be determined by a majority vote, critics say that it is nothing. It is neither general nor a will. We are not dismayed by this line of criticism. Such criticisms are always levelled against abstract conceptions. Advocates of the doctrine take care to say that their conception is valuable only "in so far as" it embodies a common interest. This qualification is the strength of the doctrine. All that we can hope for is an approximation to the ideal, and not a complete realisation of it. The general will is both actual and ideal. It is not wholly actualised in any state.
- (2) Some writers say that the doctrine may easily lead to State Absolutism. In the name of the "general will" the worst kind of tyranny may be perpetuated. The phrase "forced to be free" opens the flood gates of absolutism. There is a great deal of force in this criticism. Nevertheless, it is not insurmountable. Rousseau is an advocate of the conception of absolute sovereignty, but at the same time he places certain moral limits on the power of

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\* Social Contract, Book II, Chapter 6.

the sovereign. Since the general will is always in the right, it will intervene only when it is proper. "The sovereign", says Rousseau, "cannot impose upon its subjects any fetters that are useless to the community, nor can it even wish to do so." We contend, therefore, that Rousseau does not sacrifice the individual in securing civil liberty. Liberty is not mere absence of restraint. Every interference on the part of the State does not mean diminution of the liberty of the individual. As Cole observes, "the precise amount of interference that is necessary to secure freedom will always be a matter for particular discussion ; every case must be decided on its own merits, and, in right, the Sovereign will be omnipotent, or subject only to the law of reason."

(3) The doctrine of the general will hinges upon the conception of the common interest and common interest, it is argued, is very difficult to define. Even the worst of tyrants can justify his action under the pretext of common good. Besides, we cannot always say in advance whether any particular expression of the general will, will be in the common interest or not. Only the sequel can answer that question. These are no doubt limitations of the doctrine of the general will which we must admit. Nevertheless, these very limitations constitute the strength of the doctrine. They serve to show that the doctrine is not a purely ideal or fanciful conception. We have to work with men and institutions as they are, but at the same time we need a goal or end towards which things may be directed. General Will, we claim, is the best possible conception for the guidance of political endeavour. It "generally requires some

degree of energy or effort, perhaps of self-sacrifice".\*

(4) The objection is raised by some that, even if we grant for the sake of argument that the general will is always right, there is no guarantee that the state machinery will always be right. In reply to this objection, we grant that the state machinery is imperfect. But we do not pretend that we can realise the general will fully. All that we can hope to do with the imperfect machinery at our disposal, is to approximate to the general will as far as possible. It is in educated or enlightened public opinion that we should look for the best approximation to the general will of the State.

#### **Truth in the Doctrine of the General Will.**

(1) It gives direction to political endeavour. It places before us a definite goal towards which we can strive in spite of temporary setbacks.

(2) It emphasises the fact that society is an organic unity and not a mere aggregate of isolated individuals. It shows that the State has a will and unity of its own, in some ways different from the will and unity of its individual members. "The State indeed has no life apart from the lives of its members: but it has, or may have, a longer, broader, and fuller life than that of any individual or any generation of its citizens".†

(3) It demonstrates the truth that "Will, not force, is the basis of the State." The conception of the general will does not call for the coercion of the minority *qua* minority. It shows that the policy of

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\* Bosanquet. The Philosophical Theory of the State - page 106. •

† Lord. page 139.

the majority can be modified according to the strength and sagacity of the minority.

- (4) It teaches that the State is natural in that it has its basis in the will and the natural need of man. "The State exists and claims our obedience because it is a natural extension of our personality".\*
- (5) It shows that the true basis of democracy is not force, not even consent, but active will.

The reason why we ought to obey the general will is not because it is imposed upon us, but because it is an intrinsic part of ourselves. In obeying the general will of the State we obey ourselves, the very best in us. The general will interprets the individual to himself. It stands for the unity of myself with myself.

#### SELECT READINGS.

Bosanquet—*The Philosophical Theory of the State*  
CHAP. IV, pp. 264-66.

Garner—*Political Science and Government*, p. 222-28.

Gettell—*Introduction to Political Science*, pp. 81-87.

Gilchrist—*Principles of Political Science*, pp. 60-65.

Hobbes—*Leviathan*. CHAPS. 13, 14, 16, 17, 18 & 21.

Joad—*Modern Political Theory*, CHAP. I.

Leacock—*Elements of Political Science*, pp. 24-31.

Locke—*Second Treatise on Civil Government*.

Lord—*Principles of Politics*, CHAPS. II-V.

Rousseau—*Social Contract, Books I & II, Book III*  
CHAPS. 15-17.

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\* Cole.

## CHAPTER VI

### THE JUSTIFICATION AND END OF THE STATE

Even more important than investigation into the origin and evolution of the state is the question relating to the justification and end of the state. Merely to show that the state has come into being due to one reason or another is not enough. What we are most concerned with is, why should there be a state at all? Has the state a rational basis? Can we not get on without the state? At a very early time, Aristotle saw the force of these queries when he claimed that the state first came into being in order that we might live, but was continued in order that we might live happily. Aristotle thus justified the state as being essential to man's good life. In spite of this reasoning we cannot but feel that even in the best among Greek writers we do not find an adequate justification of force exercised by the state. They show us convincingly that the full and free development of man is impossible in isolation and that man requires society for the attainment of this end. But the problem of force wielded by the state hardly engages their attention, largely because it is a modern problem.

The state is a way of regulating human conduct, by compulsion if necessary. The will of the state is in many ways superior to all other wills. The state has the power to take away the individual's life, liberty, and property. It commands him to surrender his property by means of taxes and his life upon the battle-field or in punishment for

crime. Can all this be justified? Many attempts have been made to justify, and even condemn, the existence of the state in all ages. We shall sum them up under the following heads:—

1. *The Anarchist View.*—The anarchists have frankly no use for the state. They believe that the state has no national purpose to serve and that the sooner we get rid of it the better it will be for man's growth and development. The revolutionary anarchists want to subvert the present social order by violent methods. With these anarchists we are not much concerned in a serious study of political science. The type who demand our attention are the philosophical anarchists such as Tolstoy. Their objection is not so much to the state as such, but to force used by the state. They claim that the truly moral life is issued by one's own effort and that the authority of the state is a hindrance to the development of such morality. They see in this authority a destruction of all moral values. The state is to them a red rag to a mad bull. Instead of making a man moral, it really makes him immoral by the force that it wields. Instead of trusting the individual to do the right thing, it distrusts him and threatens him with punishment. Governments, they argue, are therefore not only useless, but also mischievous. According to them, voluntary organisation can very well undertake the work of society and, if the state is to be retained at all, it should become a voluntary organisation. Laws should take the form of suggestion and advice, and taxes the form of voluntary contributions. The philosophical anarchists believe that society should be governed by love and not by the "irrational" principle of force. Man should be so educated that he will voluntarily and almost instinctively do that which is true, good, beautiful, and noble. The perfect society they conceive in terms of a love-knit family, untouched by authority. The only kind of government that they are prepared to support is the perfect and unfettered self-government of the individual.

*Criticism.*—Several lines of criticism suggest themselves to us in considering philosophical anarchism.

- (1) We are prepared to concede to the anarchists that true morality is largely self-earned. But this is not to admit that state action means a complete destruction of moral values. The state cannot *directly* promote or enforce morality. Yet it can so order external conditions as to make it possible for the individual to live the good life. Therefore, our contention is that state action does not destroy moral values; it only diminishes them. Even in the case of the best of us, the policeman's club is at times an aid to living the good life. The requirement of good action does not prevent the growth of morality. We can do right by conformity.
- (2) The anarchist is mistaken in thinking that liberty is the greatest of all political goods. Liberty, we need to remind ourselves, is not an end in itself. It is simply a means to an end. Liberty and authority are not opposed to one another, as the anarchist conceives them to be. They are supplementary and complementary to each other. No human association leaves the individual completely free. Every group implies some restraint upon individual freedom.
- (3) The anarchist gives us a faulty picture of human nature. His assumption is that organised political society has debased human character and that, once it is removed, man will once again become a noble being. This is very much like the assumption of Rousseau in his essay on *Inequality* that man in the state of nature lived an idyllic life and that the development of civilisation has brought about all our present ills. However, Rousseau himself considerably modified this view in the later *Social Contract* and came to the

conclusion that the balance of advantages was on the side of the civil state. It is easy enough to become poetic regarding the virtues of the "noble savage," but what we know of human nature and the history of primitive man gives the lie to such a roseate picture. We are safe in saying that man has reached his present level of development in and through organised political society.

The anarchist assumes that we can effect tremendous improvement in human nature by education, persuasion, and moral teaching, and that, in some far-off day at least, we can entirely get rid of the state. While we do not want to deny that human nature can be greatly improved by the means suggested and that the scope within which it is possible to improve human nature has not yet been fully discovered, we fear that the destruction of the state at present or in any conceivable future will lead to general disorder and chaos. The brute in man cannot be easily destroyed, and it is the coercive authority of the state which keeps it in check.

- (4) The anarchist assumes that there is nothing but love in the perfect household. This is a false assumption. Authority, law, and restraint are not evident on the surface in an ideal family. Nevertheless, they are there. As Hearnshaw observes, in order to curb criminals and the criminal tendencies in the natures of all, it is necessary to have the might of the state in reserve. Therefore, at least for the present, we cannot dispense with the tutelage of Government and the sanity of law.
- (5) The anarchist wants to do away with the authority of the state and substitute for it the authority of the individual conscience. But the individual

conscience, as has been aptly remarked, is an extremely tricky and capricious sovereign.

2. *The Religious View.*—From very early times people have justified the existence of the state on the supposed ground that it is the creation of God and that obedience to the state is in accordance with the Divine purpose. Oriental monarchies were for the most part theocracies. Membership in the state was at the same time membership in a religious body. Since the head of the state was also the head of the religious organisation, the state and the religious community were identical. The conception of theocracy was most highly developed among the Hebrews who regarded themselves as God's chosen people. The Jewish State was the direct result of the Divine will and was justified wholly on religious grounds.

The Greeks, too, justified the state in religious terms, although they did not carry the theocratic conception so far. Among the Greeks the worship of common Gods lay at the foundation of state life. The institution of the state was attributed to the interposition of some God or other, and each city had its special deities who presided over it. Plato and Aristotle, the best among Greek Political thinkers, advanced a different view. They looked upon the State as natural and necessary. But they did not solve the problem of the reconciliation of political authority with individual freedom. They contented themselves with the view that the state had come into existence owing to natural causes and that the life of man apart from the state was incomplete and even meaningless.

Like the Greek city-state, the Roman state had a religious origin. The Romans, too, had their special divinities and the Roman tribes were knit together by a common religious worship. Later on when Rome became an empire, divine attributes were assigned to the Emperor. Prof. Elliott observes: "The conception of the origin of the state was as near to a justification of the power of the state as antiquity came."

The Church Fathers developed the idea that the state was the result of man's sin. It was God's punishment for the sins of man. In support of their theory, these Church Fathers adduced the Biblical account of Cain founding a city after slaying his brother Abel and the legendary story of the founding of Rome in a brother's blood. The only way in which the Church Fathers could justify the state was in the service it rendered to the Church. This view persisted far into the Middle Ages and was frequently used by theologians to maintain the supremacy of the Church over the Empire.

St. Augustine (354-430 A. D.) who marked the transition from the classical to the mediæval world and who gave direction to the political thought of the Middle Ages, believed in the Divine origin of the State. He held that the ruler was the representative of God on earth and was, therefore, entitled to obedience from his subjects. At the same time he believed that the earthly State was inferior to the "eternal state of the spirit and of the hereafter." This dualism the earthly state and the spiritual state lasted throughout the Middle Ages and was the cause of the bitter and long drawn out struggle between the Pope and the Emperor.

The Protestant Reformation with which modern times begin attempted a religious justification of the state by means of the theory of the divine right of kings. The Reformers taught that political authority came ultimately from God and that, therefore, the ruler to whom obedience was due ruled by divine right. The chief exponents of this theory among rulers were the Stuart kings in England and Louis XIV in France. They used the theory to justify royal absolutism. In the course of centuries the theory assumed different forms, "but in all of them submission to the constituted authority was demanded on the ground of the divinely appointed character of the ruler." Some elements of the theory survived till recent times, as, for example, in pre-war Germany and Russia, where strong emphasis was placed on the divine

character of kingship. With the spread of the modern idea that governmental authority comes, not from God, but from the people, and the spread of modern democracy, the theory of divine right has become obsolete.

*Criticism.* In this age of scientific enquiry the argument that we should obey the state merely because it is supposed to have been created by God does not carry any conviction. There is no positive proof to show that any state is the direct creation of God. The most that even religious-minded writers are prepared to admit is that state-life is in accordance with the divine purpose. Even if we assume for the sake of argument that the state is divinely created, such a theory does not help us to distinguish right forms of political authority from wrong forms.

3. *Physical Force.*—From the very early days of political speculation an attempt has been made to justify the existence of the state on the ground that it possesses superior physical force. The Sophists held that the state was either the rule of the strong for the oppression of the weak or the combination of the weak, who formed the majority, against the physically stronger but less numerous. The early Fathers of the Christian Church and the theologians of the Middle Ages emphasised the mere physical strength of the state in their enthusiasm to exalt the authority of the Church over the state. Thus Pope Gregory VII wrote in 1080: "Which of us is ignorant that kings and lords have had their origin in those, who, ignorant of God, by annoyance, rapine, perfidy, slaughter by every crime, with the devil agitating as the prince of the world, have continued to rule over their fellow-men with blind cupidity and intolerable presumption?" \*

In modern times Spinoza, Marx, Engels, Nietzsche, and Spencer have given currency to the view that the state is the embodiment of force. Spinoza held that the state expressed

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\*Gierke: Political Theories of the Middle Ages.

superior physical strength and that its right was only limited by its power. Marx and Engels regarded the state as an organisation of the classes for the exploitation of the masses. Nietzsche built his theory of the 'Superman' on the basis of physical strength. Spencer held that the state was an expression of mere brute force and that its power should be curbed in the interest of individual liberty.

*Criticism.* To say that we must obey the state because it is the rule of the strongest seems absurd. This absurdity is clearly brought out by Rousseau when he says: "A brigand surprises me at the edge of a wood: must I not merely surrender my purse on compulsion; but even if I could withhold it, am I in conscience bound to give it up? For certainly the pistol he holds is also a power."\* To yield to force is, at best, an act of prudence. It is not a moral duty. "Force in itself," as Laski says, "is void of moral content."† Political subjection, if it is to be justified, calls for the *will* of the subjects. Without such a will in the state, we have a mass of slaves and not a body of citizens. Force is justifiable only in so far as it maintains and furthers human rights. In the striking words of T. H. Green, "It is not supreme coercive power, simply as such, but supreme coercive power exercised in a certain way and for certain ends, that makes a state viz. exercised according to law, written or customary, and for; the maintenance of rights."

*Criticism.*—This theory is in essence a revolutionary theory. For, if it is fully worked out, it will mean that any group is justified in asserting itself and securing control of the government as soon as it is physically able to do so. The force of the state is justifiable only as long as it is able to repel other forces. But the moment one of these forces is able to establish itself successfully, it becomes right and the

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\*Social Contract, Bk. I, Ch. III.

†Introduction to Politics, p. 46.

original force ceases to be right. We may, therefore, ask with Rousseau, "What kind of right is that which perishes when force fails?"\* To quote Rousseau again, "If force creates right, the effect changes with the cause: every force that is greater than the first succeeds to its right. As soon as it is possible to disobey with impunity, disobedience is legitimate; and the strongest being always in the right, the only thing that matters is to act so as to become the strongest..... If we must obey perforce, there is no need to obey because we ought; and if we are not forced to obey, we are under no obligation to do so. Clearly, the word 'right' adds nothing to force: in this conviction, it means absolutely nothing."

At best, this view justifies the existence of government, but not the existence of the state. It justifies the governance of a particular ruler, but not the authority of organised political society.

4. *The Contract View.*—In the 17th and 18th centuries in Western Europe, this view was the most popular in justifying the existence of the state. According to it, the authority of the state is justifiable because we have set it up ourselves by free choice. At first sight, it would appear that there was no better way of justifying the existence of the state than this. The State, it might be argued, is the product of the will of the individual and, therefore, obedience to it is thoroughly reasonable.

*Criticism.*—A moment's reflection is enough to show that to base political authority upon a contract is to base it upon shifting sand:—

- (1) History knows of no state which came into being as the result of a deliberate agreement between men. The state has not been made by anybody, but has grown.
- (2) If subjection to the state is justified on the ground

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\*Op. cit.

of free consent, it is reasonable to demand unanimous consent for every law of the state before it can become operative. Majority opinion is not enough. There is no reasonable ground for the coercion of a dissenting minority by the majority. The force of this criticism is clearly brought out in the political theory of Herbert Spencer. Like a true individualist, Spencer argues that the state should undertake only those functions which the people are likely to hand over to the state because they are unable to undertake them themselves. According to him, these functions are (a) protection against external enemies; (b) protection against internal enemies; (c) nationalisation of land. (In his later works Spencer gives up the last mentioned function and substitutes for it the enforcement of contracts.) No sooner has Spencer assigned these functions than he proceeds, illogically enough, to introduce certain qualifications. He realises that even on these three vital matters we cannot get unanimous consent in any society. Thus he says that Quakers and conscientious objectors to war will be opposed even to a defensive warfare, criminals to the State undertaking defence against internal enemies, and landlords to the nationalisation of land; and that the principle of absolute unanimity will have to be disregarded in these cases. The question that we naturally ask ourselves is that if the principle of unanimity is to be set aside in these cases, why should it not be ignored in other cases as well? Spencer is opposed to popular education, factory legislation, etc. Yet there are many people to-day who think that compulsory conscription is worse than factory legislation and that, if coercion is to be employed, it is much more justifiable to employ it

in the latter case than in the former. The conclusion, then, to which we are invariably driven is that the principle of literal consent is of no avail in solving the problem of political authority and individual obligation.

(3) Even if literal consent is possible in any matter, it is ruled out in the modern states by the fact that representative government in some form or other is the only way by which the will of the state can find expression. Direct democracy is impossible under modern conditions. To say that tacit consent is enough in these cases, according to the argument of the contractualists, is not justifiable. "Because consent involves the notion of a deliberate act of will, something more positive than this (viz. tacit consent) is required."\*

(4) If consent is freely given, it is logical to argue that it might be freely withdrawn and that those so withdrawing might freely unite again to form another state. Hobbes realised this difficulty and attempted to solve it by declaring that it was a law of nature that men should keep their covenants when made. It is obvious that such an argument carries with it no conviction whatever. It is a pure assumption on the part of Hobbes, deriving no support from experience or reason. Other contractualists have argued that people who want to withdraw their consent from the law of the state may be regarded as "strangers within the state." This is sheer nonsense. We cannot agree with Spencer when he claims that the individual has a right to make an "outlaw" of himself and yet remain within the state. A "right" of this

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\*Laski: Introduction to Politics. p. 31.

description would make administration impossible and eventually lead to anarchy.

(5) David Hume advanced the most damaging criticism of the contract theory when he claimed that it was in essence revolutionary as it provided no power which could hold the individual to his agreement. T. H. Green re iterates this criticism when he claims that the contract which people in the state of nature are supposed to make is no valid contract at all, for there is no "imponent" to enforce such a contract. The sovereign authority succeeds the contract and does not precede it, as it should.

5. *The Utility Theory*.—Many thinkers have tried to justify the existence of the state on utilitarian grounds. They argue that the rationale of the state lies in the fact it provides law and order, protects the individual against internal and external enemies, enforces contracts, adjusts relationships between individuals and groups, fosters literature, art, and science, and provides, in short, the frame-work within which the life of society can be carried on with the least possible friction and to the maximum advantage possible. Thus Laski in his *Introduction to Politics* (p. 32.) says: "The power of the state can be justified only in terms of what it seeks to do. Its law must be capable of justification in terms of the demands it seeks to satisfy. The state presides over a vast welter of interests, personal and corporate, competing and co-operating. Its claim to allegiance must obviously be built upon its power to make the response to social demand maximal in character. It must strike such a balance of interests that what emerges as satisfied is greater than can be secured on any alternative programme."

*Criticism*.—There is no doubt that the above justification of the state is much more satisfactory than those that we have previously considered. Nevertheless, it is open to criticism.

(1) Theories based upon utility are apt to take too narrow and materialistic a view of the state and to regard the state as "a mere public utilities company." We have considered this point of view in an earlier chapter and have said that the state is not a mere partnership for the attainment of certain material ends. The state should undoubtedly secure the material well-being of its members. But at the same time it has a moral and spiritual function to fulfil. It is "a partnership in all virtue."\* One of its ends, and, perhaps, the most important is the promotion of the "excellence of souls."† The state is one of the primary ethical institutions of society. To justify the state purely on the ground of utility is like saying that the family exists solely for conjugal happiness, the procreation of children, and the rearing of the human race. Both the family and the state have a moral purpose to fulfil. Both provide a life of fellowship and make the self-realisation of the individual possible.

(2) The utility theory is apt to regard the state as a mere means to the welfare of the individual, while as a matter of fact, it is both a means and an end. The state considers the welfare not only of existing generations but also that of generations yet to be. In this latter respect may be regarded as an end in itself.

6. *Necessity of Organisation.*—A particular form of the utilitarian justification of the state is expressed by some who emphasise the need for organisation. Primitive man did not know the value of organisation. What organisation he had was of an elementary character, and more or less instinctive

\* Burke.

† Bosanquet.

in origin. But civilised times have witnessed the establishment of organisation for every conceivable purpose. Experience has taught us that the group can do certain things more successfully than the individual. We organise ourselves for the conducting of business, for the promotion of pleasure, of art, science, and religion, and for purposes of war and peace. We even organise to secure peace by force. The number of organisations in our modern society is innumerable, and the state is the most important and the most comprehensive of all of them. It is the one organisation which underlies all others and the one from which all others derive their necessary support. Such an organisation requires a set of rules and regulations for the realisation of its purposes, as well as an adequate physical force to make its will effective.

*Criticism.*—While there is no objection to this justification of the state, it must be said that the criticisms mentioned above in connection with the utilitarian theory hold good here as well.

7. *The Psychological View.*—Attempts have been made since the days of Aristotle to show that man has a political instinct and that it is a part of man's nature to be ruled. Man, it is said, is a "political animal."

*Criticism.*—(1) If this be so, how do we account for the fact that there are those who deny that they have an instinctive sociability or political sentiment? Basing our argument on the history of the Eskimos, who constitute a society, but do not have a state, life would not seem to be a universal necessity. (2) Besides, merely to assert that the state is rooted in human instincts is not enough. Not everything that is instinctive is necessarily good and worth preserving. As Willoughby has aptly pointed out, our problem in political theory is to justify political authority as humanly exercised, and to harmonise it with man's personal freedom. The psychological view does not help us in this task, it does

not show how, or by whom, political authority is to be exercised and how it is to be reconciled with individual freedom.

8. *The Idealistic View.*—From the point of view of idealism which seems on the whole the most satisfactory theory, obedience to the state is justifiable because the state expresses the best in us. It is not an enemy of man, not even a disinterested observer, but the true friend of the individual. In obeying the will of the state we are obeying our own wills, purged and purified of their selfishness. In their true being, the state and the individual are identical. To use the language of Hegel, the state is the "actualisation of freedom" or "the embodiment of concrete freedom."

From the idealistic point of view the state is an ethical institution. It makes possible free social life, without which man cannot realise himself fully. It is we ourselves in a different capacity. It is the natural expansion and development of the individual. It enables the will and reason of man to express itself. It furnishes the external conditions of the moral life. It gives "unity, stability, and increasing self-consciousness to society as a whole."\* It is "the organiser of rights and the guardian of social justice."† Hence obedience to the state becomes a moral duty.

It is in this manner that T. H. Green justifies obedience to the state. He controverts the popular belief that the root of morality is man's conscience and that of political subjection is force. He rightly holds that both morality and political subjection have a common source, *viz.*, "the rational recognition by certain human beings ....of a common well-being, which is their well-being, and which they conceive as their well-being whether at any moment any one of them is inclined to it or not, and the embodiment of that recognition in rules by which the inclinations of the individuals are

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\* N. Wilde. *The Ethical Basis of the State*, p. 148.

† *Ibid.*

restrained, and a corresponding freedom of action for the attainment of well-being on the whole is secured.”\* “Both morality and political subjection imply the twofold conception, (a) I *must*, though ‘I do not like;’ (b) ‘I *must because* it is for the common good which is also my good.’”† Green goes on to say that simple fear can never constitute true obedience to the state. To represent simple fear as the basis of civil subjection is to confound the citizen with the slave. A habit of subjection founded upon fear cannot be a basis of political or free society.

*Criticism.*—(1) It will no doubt be said that the view presented here is fanciful inasmuch as there is no actual state which answers to the picture painted. It may be asked, as Green has pointed out, “Is it not trifling with words to speak of political subjection in modern states as based on the *will* of the subjects?” But as Green himself says, it is only to the extent to which the individual realises that the state serves a common interest of which his interest is an intrinsic part, that he is likely to become a loyal subject. If his patriotism is to be true and abiding, he needs to have a feeling for the state analogous to the feeling which he has for family and home. We admit that such a feeling is very partially realised even in the best state. We do not argue, as Hegel did, that the ideal state is identical with the Prussian State of Hegel’s day or with any other state. Nevertheless we contend that the state embodies, however imperfectly, the conception of a common good, and it is this conception which is the true source of political subjection.

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\* T. H. Green. *Principles of Political Obligation*, pp. 124—125.

† *Ibid.* p. XV.

‡ *Ibid.* p. XV.

(2) Those who are opposed to the idealistic justification of the State will probably argue that force creates the State and habit perpetuates it or that political subjection is in the interest of social expediency. There is no doubt whatever that self-interest, force, and fear have played a considerable part in the creation and perpetuation of the State, but they have produced good results only so far as they have been "fused with and guided by some unselfish element."\* "The fact that the State implies a supreme co-ercive power gives colour to the view that it is based on coercion, whereas the coercive power is only supreme *because* it is exercised in a State, i.e., according to some system of law, written or customary."†

(3) It may be further said that even if it be granted for the sake of argument that will is the basis of the State, it can be the basis only of the democratic State ; how can people have a feeling for the State and an appreciation for the common good unless they actively participate in the legislative and administrative functions of the State ? This is a forcible criticism, and we are bound to accept it as generally valid. Nevertheless we believe that even in a country which is not democratically governed, we may assume that general will is indirectly present so long as there is peace and order in the country and there is no general upheaval.

In the light of all that we have said, we come back to the conclusion that obedience to the State is obedience to the citizen's own better self and that even if it be not so in any particular case, it should be our constant endeavour to make it so.

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\* T. H. Green. *Principles of Political Obligation*, p. xvi.

† *Ibid.*

*The End of the State.*—The justification of the State is incomplete without a consideration of the end or purpose for which the State exists. In discussing this theme it is usual to distinguish between the immediate or proximate end, and the final or ultimate end. While it is easy to determine the former, the latter is more a matter of faith than of knowledge.

To the Greeks the purpose of the State was self-sufficiency. The State, they said, should provide for its citizens all that was necessary for their highest development and happiness. Plato regarded the State as a macrocosm in which the individual could find his proper place and perform the duties for which he was best fitted. The rulers and warriors should give their undivided attention to the highest well-being of the State, and to this end Plato laid down a communistic way of life for them. To the mind of Plato the State was a well-developed organism in which each individual and each class had a particular place to fill and was happy in so doing.

Aristotle believed that the purpose of the State was to secure the development of virtue in the citizens ; but he, too, believed in the self-sufficiency of the Greek City State, which was to produce the greatest happiness in the individual. Thus in his *Politics* Aristotle devotes a whole chapter to this theme. A free paraphrase of the chapter is as follows :—

The State exists not for the sake of wealth or security or society, but for the sake of a *good life*. If life were the only object of the State, slaves and brute animals might form a State, but they cannot, for they have no share in happiness or in a life of free choice. If alliance and security from injustice or exchange and mutual intercourse were the only objects, all who have formed commercial treaties, would be citizens of the State. They do not have common magistracies, are not concerned with the wrong or wickedness of the other States, and do not endeavour to make the citizens what they ought to be. The State also takes into consideration *virtue*

and vice. It is more than a mere alliance designed for the protection of life and property.

The State implies not only inter-marriage, inter-course, exchange, and a common locality, but much more than these —*a community of well-being*. It is not a mere society, having a common place, established for the prevention of crime and for the sake of exchange. It is a community of well-being in families and aggregations of families for the sake of a perfect and self-sufficing life. Such a community is possible only among those who live in the same place and inter-marry. The end is good life and the means are family connections, brotherhoods, common sacrifices, amusements, etc., that is friendship. The State is made up of families and villages having for an end a perfect and self sufficing life.

Political society therefore exists for the sake of noble actions, and not for mere companionship, and those who contribute most to such a society, have the greatest claim to power.

The Romans did not speculate much on the end of the State. Most of their energies were absorbed in the building up of the Roman Empire. Rome came to be the centre of the Western World and of Western Civilization, so much so that even after the fall of the Empire, her name and fame lasted for many centuries.

During the Middle Ages, too, there was not much speculation regarding the end of the State. Ecclesiastical writers generally considered the State an instrument with which to defend Christianity against the attacks of infidels. Aquinas thought that the State existed in order to establish peace and unity and promote right living among the subjects. The State was valued as doing service to an end conceived in religious, and more particularly in theological terms.

Serious discussions regarding the end of the State began only with modern times, with the rise of liberalism and the overthrow of the idea that the State was the patrimony of

the Prince. When men began to realise that the State belonged to the people, there developed theories regarding the end of the State.

According to Hobbes the purpose of the State was to maintain order and the rights of the property. Hobbes took such a gloomy view of the state of nature preceding the establishment of civil society that he held that any State was better than no State. Tyranny to him was preferable to anarchy. Locke, likewise, claimed that the purpose of the State was to maintain life, liberty, and property by means of a known law and a common judge. When we come to Rousseau, we find a revival of the idea that the State exists in order to make good life possible for the individual, although he does not state it in this particular form. He is convinced that the State is not a mere matter of convenience for the gaining of utilitarian ends, but the highest expression of the best in man.

1. *The End as General Happiness.*—Jeremy Bentham in the early part of the 19th century popularised the idea that the purpose of the State was the promotion of the greatest happiness of the greatest number. This utilitarian view is strongly held even to-day. It was largely responsible for a great number of reforms in the social and political life of 19th century England. In particular it brought about reforms in the poor law, land law, prison management, divorce law, franchise, popular education, etc. To remove the odium which attaches itself to "happiness" in the sense of "pleasure," some writers have substituted "greatest good" or "general welfare" for "greatest happiness." In spite of this improvement, the theory is in danger of sacrificing the minority to the majority. "The excellence of the few may be made subservient to the incompetence of the many." The theory tends to develop mediocrity in society and to crush out individual excellence. Besides, the term happiness in the sense of pleasure is difficult to define. No two individuals are agreed

on what happiness means. Therefore, to assign to the state the task of measuring pleasures and of promoting general happiness seems an impossible task. A knows what gives him pleasure and B knows what gives him pleasure, but neither A nor B knows what general pleasure would be like. Furthermore, the Utilitarian theory is individualistic in its outlook and does not take into account the organic nature of society. Inspite of these serious defects, by using terms like happiness in a very loose way, the theory helped to bring about much humanitarian legislation. As Gilchrist observes, it is "a commonsense expression of the ends of legislation but as a complete expression of the end of the state it breaks down on close examination." \*

2. *The End as Maintenance of Order*.—In the 19th century many other views were proclaimed regarding the end of the state. One of the most popular of these was the individualistic view that the state existed merely to maintain law. Some writers extended it to include order and security. It was argued that each individual should be left to work out his own salvation free from the activity of the state and that the state should simply provide external and internal protection so that men might live together peaceably. This theory presents too narrow a view of the end of the state. Undoubtedly it is the business of the state to provide security of person and property, but it is not the complete end. In its practical working, the theory tends to justify *in toto* things as they are and to discourage progress. It is in danger of perpetuating the *status quo*, whether the *status quo* is worth perpetuation or not.

3. *The End as Progress*.—Some have defined the end of the state as progress. This theory does not say much. It does not state clearly what the end is. The term progress is meaningless apart from the end or goal towards which it is

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\* Gilchrist. *Principles of Political Science*, p. 427.

made. "We must determine the end in order to make progress possible."

4. *The End as Social Science*.—Those with a socialistic turn of mind claim that the state exists in order to promote "certain social sciences, which have nothing to do with protecting the individual from external attacks, nor the maintenance of law as between the individuals in the state, but which have to do primarily with the social interests of the community."† Such an end, we find, is coming more and more to the forefront in the practice of modern states which undertake the case of public health and public morals and the promotion of the economic interests of the people. A large group of these writers want to extend the power of the state so as to include the ownership and management of the means of production and distribution. The chief criticism of this view is that it is a theory of the limits of state action rather than of the final end of the state.

5. *The End as Justice*.—A great many modern writers regard justice as the end of the state. These are usually idealists, but not all idealists accept justice as the political end.

Hetherington and Muirhead in *Social Purpose*, claim that the organisation of justice has always been the main function of the state. They interpret justice in the sense of "an order of life in which human personality and its ideals can be realised." They further say that "at bottom, the state is the expression of a view of the good life for men.....In this larger sense, then, we may still hold that the end of the state is the organisation of justice, and that therefore it is pre-eminently a moral institution,"‡

While we are prepared to accept the general statement that the end of the state is ethical, we cannot help feeling that justice as a political end is too narrow a view.

† Elliot.

‡ Quoted by N. Wilde. *The Ethical Basis of the state*, p. 146.

Hetherington and Muirhead use justice in a very wide sense, embracing the whole field of morality, but this is not the ordinary usage of the term. Further, as Gilchrist observes, "Justice is more a condition dependent on the realisation of the true end. Complete justice too involves absolute knowledge, which belongs only to God."¶

*Is the State an End or a Means?*—Many other theories have been advanced regarding the end of the state. It is not necessary that we should examine all of them. A question which has engaged the special attention of modern writers is this, "Is the state an end in itself or is it only a means?" The ancients, particularly the Greek, regarded the state as the highest fulfilment of human life and as an end in itself. The present-day distinction between the individual and the state was altogether foreign to them, because the conditions under which they lived were totally different from ours.

The view that the state is an end in itself was revived in recent times by Hegel, who identified the will of the individual with the will of the state. Over against such absolutism is the view of individualists, to many of whom the state is only a means for the promotion of the welfare of the greatest number of individuals. The chief objection to such a view is that the state does not concern itself entirely with the welfare of any one generation. It takes into account the welfare of generations yet to be, and in ensuring this distant end it imposes heavy burdens upon its citizens. Individual welfare, it is clear, is not the only end of the state.

The general consensus of opinion to-day is that the state is both an end and a means. Thus Willoughby, in *The Nature of the State*, argues that, if we look at the state purely from the individualistic point of view, "it is only a means, an instrumentality, or an expedient through which the highest possible development of humanity is obtained. But if the

state is considered as an institution distinct and apart from the citizens who compose it, it is, of course,.....an end in itself."\* Bluntschli explains the double nature of the state by a striking analogy. "A picture is often a means of obtaining a livelihood for the artist. Yet a true work of art is to the artist the aim of his higher effort, he sees in it the expression of his most vivid feelings, the embodiment of his ideal. In this way it has an end in itself." Similarly the state is a means to the well-being of the individual as well as an end in itself, for it looks far beyond the well-being of any particular group of individuals or any one generation.

In considering the end of the state, it is profitable to distinguish between its general or fundamental end and its particular ends, as also between its ultimate or remote end and its immediate or proximate ends. Adopting such a classification, Holtzendorff distinguishes between the actual ends of the state and the ideal ends. The state, he says, should first of all develop its national power against other states as well as against individuals and groups of individuals within the state. In the second place, it should secure individual liberty by marking off a sphere within which the individual could develop himself without any interference on the part of the government or other individuals. Finally, it should promote general welfare by maintaining peace and order and by aiding and educating its subjects.

Bluntschli states the proper end of the state "the development of the national capacities, the perfecting of the national life, and finally its completion, provided, of course, that the process of moral and political development shall not be opposed to the destiny of humanity." According to this view, it would appear that the immediate end of the state is the maintenance of national power, and their development, and the

final end, "the destiny of humanity." It is interesting to note that during the Great War when one would have expected the nationalist view to receive the greatest attention it was the wider end of humanity which made the most powerful appeal. The nationalist view, pure and simple, as contained in the early part of Bluntschli's definition raises the same objections as those to which pure and simple individualism is open. Both of these may develop interests detrimental to the welfare of society as a whole. As Gilchrist observes, "In the modern world we are more and more tending to look beyond the (national) boundaries for an ideal. Internationalism is gradually replacing nationalism." \*

A recent American writer, Burgess, speaks of the primary, secondary, and ultimate ends of the State and regards each of these as being in turn a means to the accomplishment of the succeeding end. The proximate end, says Burgess, is government and liberty. The State should first and foremost preserve itself and its individual members. But as soon as this end is attained and the law-abiding habit becomes fixed, the State should mark off a sphere of individual liberty and protect it against all encroachments and increase it from time to time. The secondary end, growing out of the proximate end, is the perfecting of the principle of nationality or the development of the national genius. For the accomplishment of this end, nation-states, resting on natural, physical, and ethnic foundations, are the best instruments. The final end is the perfecting of humanity or the advancement of the civilisation of the world at large.

Criticising this point of view, Garner remarks ".....here again we have what seems to be a confusion of ends with means. It is difficult to see, for example, why the establishment of government should be considered as an end to be

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\* Gilchrist: *Principles of Political Science*, p. 430.

realised rather than the means through which ends are sought."\* According to Garner, the triple end of the State is firstly, the advancement of the good of the individual; secondly, the promotion of the collective interests of individuals in their associated capacity; and finally, the furthering of the civilisation and progress of the world.

### SELECT READINGS.

Garner—*Introduction to Political Science*, CHAPS. IX & X.  
Garner—*Political Science and Government*, pp. 69-74.  
Gettell—*Introduction to Political Science*, pp. 377-379.  
Gilchrist—*Principles of Political Science*, pp. 424-431.  
Wilde—*The Ethical Basis of the State*, CHAP. VII.  
W. Wilson—*The State*, CHAPS. 15 & 16.  
Willoughby—*Nature of the State*, CHAP. 12.

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\* Garner: Political Science and Government p. 73.

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## CHAPTER VII

### THEORIES OF RIGHTS

What is meant by rights? How have we come to possess rights? How are rights to be distinguished from wrongs? These are questions which interest the ordinary citizen just as much as the serious student of political science.

We may preface our discussion of the subject by three preliminary observations which, it seems to us, should underlie any sound view of rights. In the first place, rights and duties are correlative conceptions, that is, every right carries with it a corresponding obligation. Any right on A's part always implies an obligation on the part of B to respect that right. As Mr. V. S. Sastri aptly points out in his Kamala Lectures, rights and duties are the same thing looked at from two different points of view. They are like the two sides of a coin. Rights depend upon duties. "It is only in a world of duties that rights have significance."\*

Our second observation which is a corollary of the first is that every right requires social recognition. Without such recognition, rights are empty claims. Rights do not exist in a vacuum, so to speak. They require the sanction of society. Social recognition does not mean mere legal recognition, although it often does, and should, include that. Social recognition must have a moral basis behind it. It must rest upon a common ground or common interest. All rights must in the last resort be relative to some common end or moral good.

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\* N. Wilde: The Ethical Basis of the State, p. 119.

Thirdly, a right is not a selfish claim. It is a disinterested desire. It is something which is capable of universal application. In asserting my right, I am really rendering a public service, and when I fight for the rights of others I may do so at great personal loss. No true right is based on individual caprice. "The matter is one of fact and logic, not of fancies and wishes."\*

Older societies as a rule did not recognise rights to any great extent. They had only petitions and charities. Modern democratic societies, on the other hand, give a very important place to rights. "The Revolution (French) did not ask for charity: it demanded the rights of man."† Some of our present day constitutions, e.g. those of the Irish Free State and Germany, guarantee certain fundamental rights to their citizens. Rights have a tendency to grow. Even our privileges tend to become rights in course of time. New rights frequently come into being, e.g. the right to work, the right to strike, the right to retain one's job when one is on a strike, &c.

Among the various explanations of rights which have been offered from time to time, we can distinguish five main theories. These are:—

- (1) the theory of natural rights;
- (2) the legal theory of rights;
- (3) the historical theory of rights or the theory which bases rights upon customs;
- (4) the social welfare or the social expediency theory of rights;
- (5) the idealistic or personality theory of rights.

**1 The Theory of Natural Rights.**—This is the earliest theory of rights. It goes back to the Greek times. It holds

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\* B. Bosanquet: *The Philosophical Theory of the State*, p. 197.

† C. D. Burns: *Political Ideals*, p. 152.

that rights belong to man by nature. They inhere in him. They are as much a part of man's nature as, say, the colour of his skin. They do not require any elaborate explanation or justification. They are self-evident truths. One simply asserts them dogmatically. Rights are absolute. They are pre-civil and, according to some, even pre-social. They are inborn. They can be asserted anywhere and everywhere. Thus, Locke says, all men are born free and rational. God has given authority to no man to compel another to carry out his orders. Likewise, the right to life, the right to liberty, the right to judgment, the right to carry out one's judgment, &c., are all natural rights.

This theory of natural rights has played a very important part in the history of human development. Among English writers, John Locke and Thomas Paine made much use of it. In practical politics it exerted great influence on the constitutional struggles of America and France. Thus the Virginian Constitution declares "That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot by any compact deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."\* The American Declaration of Independence (1776) and the French Declarations of 1791 and 1793 use similar language. The French Declaration of 1793 names liberty, equality, security, and property as among the important natural rights of man.

The social contract writers in general are advocates of the theory under consideration. They assume that man had certain natural rights to start with, and that, at the time the contract was formed, he surrendered some of these rights to a superior authority in order to be able to safeguard the rest.

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\* Quoted by D. G. Ritchie: *Natural Rights*, p. 5.

This point of view is clearly seen in Locke. In spite of his advocacy of the social contract theory, Hobbes adopts a totally different point of view. According to him, one's natural rights are one's natural powers. In the state of nature, he says, "every man has a right to everything; even to one another's body."\* The natural state is a purely animal condition.

Herbert Spencer, whose political theory has a very strong resemblance to the thought of the social contract writers, asserts that his study of the evolution of life among both animals and man drives him to the conclusion that the one fundamental right of all men is the right to equal freedom, according to which, "every man is free to do that which he wills, provided he infringes not the equal freedom of others."

The theory of natural rights played an important part in the 17th and 18th centuries, and is even to-day far from dead. In many quarters of the world, the right to food, clothing, and shelter, the right to work, and political rights like the right to vote are asserted dogmatically and carry with them the flavour of natural rights.

*Criticism.—*

(a) The most obvious criticism of the theory is that it is very difficult, if not impossible, to define the term 'natural.' D. G. Ritchie has written a whole volume on 'Natural Rights' and brings out clearly the various senses in which the term has been used. Some of the senses which he finds have been assigned to the term are :

- (1) Nature = the whole universe
- (2) Nature = the non-human part of the universe
- (3) Nature = the ideal (or completed purpose)
- (4) Nature = the original (the incomplete)
- (5) Nature = the normal or average

\* T. Hobbes : Leviathan, ch. xiv.

At this point we naturally ask, in which of these various senses are we to understand the term 'nature' in speaking of natural rights?

If we probe into the question further, we find that 'natural' is contrasted (i) with what is artificial or conventional, (ii, with what is spiritual (i.e., opposed to revelation), (iii) with the civil state. Leaving out the second interpretation which does not concern us here, we can easily see how hard it is to assign any precise meaning to these relative terms. To use the paradoxical language of Prof. Hocking, it is natural for human beings to be artificial. Wearing clothes which was artificial at one time is natural to-day. If natural means the whole process of nature— its normal meaning—, the civilised condition is just as much natural as the savage or barbarous condition. There is no reason why we should equate 'natural' with 'primitive.' Diogenes, in order to be 'natural,' lived in a tub, and we live in houses. There is no necessary inconsistency between nature and convention. The civil state is just as natural as the pre-civil state.

Cicero, following the Stoics, uses the term 'natural' to describe the feelings implanted by God and Nature in the heart of every man. This is what is more commonly known as the voice of conscience. Needless to say, this standard, like the other standards that we have discussed already, is subjective. To some, wife beating is a matter of conscience, just as much as wife-adoration may be to others. Those following the Stoics and Cicero have interpreted nature to mean common sense or the universal opinion of mankind. This interpretation is scarcely more satisfactory. The trouble with common sense is that it is not common, and its verdict varies with individuals.

(b) Seeing that the terms 'nature' and 'natural' are indefinite and are used rather loosely, we are not surprised to find that among the supporters of the theory of natural rights there is an ambiguity as to what these rights are. There is no official or complete or generally agreed upon list of natural rights. Some justify slavery as natural; and others condemn it as being unnatural and artificial. Some assert that by nature men and women are equal; and others deny it. Some hold that men are naturally good; and others believe that by nature they are wicked. Some regard private property a natural right; others deny it altogether. When we come to the relations between sexes, we find a multitude of opinions, all claiming to be based upon nature. Monogamy, polygamy, polyandry, free love, and transient marriage relations have all been supported on the basis of nature and on the analogy of the lower animals. In the light of all this, we are inclined to agree with Ritchie's statement: "If you appeal to nature, we may not be able to prove you wrong in your own court of appeal; but neither can you prove yourself right."\*

(c) The so-called natural rights conflict with one another. The French Revolution declared liberty, equality, and fraternity to be the absolute rights of man. They are supposed to be self-evident truths. But when we begin to apply them in practice, we are faced with endless difficulty. In no rational system can there be a place for absolute liberty and absolute equality. If we begin society with absolute liberty, we soon get inequality. On the other hand, if we start with absolute equality, liberty soon

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\* D. G. Ritchie : Natural Rights, p. 105.

vanishes. The theory of natural rights cannot give us a sure or self-evident way of reconciling liberty and equality. We are, therefore, obliged to turn to other quarters for such reconciliation.

Or, turn to the question of property. If property belongs to all, as is assumed by supporters of the theory of natural rights, we must know what that right implies. Does it mean private property? If it does, does it include the right to dispose of one's property as one wills? the right to do exactly what one wills with one's own, even to the extent of abusing it? Has a milk dealer, for example, the right to empty cans of milk into the gutters in order to maintain a high price? Can a mill-owner close his mill anytime that he likes without giving ample notice to his employees? These are questions which cannot be answered by the theory of natural rights. As Prof. Hocking points out, my natural right does not tell me what my limits are. The trouble with such rights is that they present us with too many absolutes.

(d) The implication of the theory of natural rights is that the State and social institutions in general are artificial and that they have robbed man of certain inherent rights which belonged to him in a state of nature. Rights represent "the recovery of a lost inheritance." (Laski). This is an absurd position to take. The State is a natural growth. It is not a secondary product, much less an intruder and a usurper. Institutions are not artificial. They are "embodiments of ethical ideas" (Bosanquet). The logical conclusion to which the theory of natural rights leads is extreme individualism. It is capable of being used both by anarchists and conservatives.

(e) The real flaw in the theory is that it assumes that we

can have rights and obligations independently of society. This is an erroneous conception. We have rights only as members of society. Apart from society, we may have powers, but not rights. Rights antecedent to society are meaningless, for the simple reason that a right is nothing without a correlative obligation. "Rights arise from the fact that man is a social being."\* Membership in a common order is the foundation of rights, and, therefore, pre civil or pre social rights are altogether meaningless. In the words of Bosanquet, "a right ..... is a claim recognised by society and enforced by the State."†

(f) Arguing from the idealistic point of view, Lord criticises the theory of natural rights as placing undue emphasis on "the nature of Nature and ignoring the nature of Right." This, it seems to us, is a valid criticism. Advocates of the theory are at great pains to elucidate the meaning of nature, but forget that a careful elucidation of "right" is just as essential, if not more so. Rights have a meaning only in relation to the part the individual has to play in the human drama.

*Truth in the theory.*—In spite of the above obvious defects, the theory of natural rights contains a large amount of truth. If by natural rights we mean rights which we had in the dim, pre-historic past, and which we have since lost, it is an absurd conception. If, on the other hand, we interpret natural rights to mean ideal rights or moral rights which we ought to have in the future in the light of which we can criticise existing conditions, the conception is a very valuable one. Thus, e.g., the right to work is "a natural right," in the

\* R. N. Gilchrist: *Principles of Political Science*, p. 134.

† B. Bosanquet: *The Philosophical Theory of the State*, p. 191.

sense that in any well-ordered society it is desirable that every one should have the opportunity to earn enough at least for his food, clothing, and shelter. It is not a right in the sense that man had it in the pre-historic past. "We may therefore define Natural Rights as 'those conditions, whether afforded by human agency or not, which are required for the development of individuality.'"\* But this is not the sense in which natural rights have been ordinarily used or understood. Natural rights in the best sense are rights which are necessary to the ethical development of man as man. As Laski observes, rights are not historic conditions possessed by man in the childhood of the race, but since lost.

**2. The Legal Theory of Rights.**—According to this theory, rights are creations of the State. What the law gives me is my right, and what the law does not give me is not my right. Rights are not absolute. They are not inherent in man at all. They are relative to the law of the land. My right to life, liberty, property, etc. is determined by the State. Rights are artificial.

This theory is opposed to the theory of natural rights. Its advocates argue that the so-called natural laws either agree with the laws of the land or disagree with them. If they agree, they are superfluous, and if they disagree, they are futile. Therefore, in either case, they can be ignored. It is no wonder that Bentham who is an advocate of the legal theory ridicules natural rights as being "nonsense upon stilts."

We find a trace of this theory in Thomas Hobbes, who holds that the fundamental right of every individual is that of self-preservation. This right, Hobbes believes, can be better maintained by the State than by the individual. Therefore, at the time that the contract is formed, people unconditionally surrender all their rights (except that of self-preservation) to the Sovereign, and whatever the Sovereign gives them is their

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\* Lord: *Principles of Politics*, p. 254.

right. Wherever the law does not put a restraint, the subject retains his natural right. But this does not mean that the Sovereign's power over life and death is superseded. He can step in at any time and limit the liberty of the subject. The subject has power wherever the law does not regulate.

*Criticism.—*

(a) We refuse to believe that the mere decree of the State can make anything right. With Prof. Hocking we may ask the question, can law make bribery and corruption a right? Or, can law re-establish satee? These are questions which carry with them their own answer. It is, therefore, clear that the law can operate only within limits. Laski goes so far as to say that rights are independent of State recognition. This is rather an extreme statement. Spencer's point of view is that the State does not create rights; it exists in order to maintain rights. N. Wilde remarks, "The law does not create our rights, but only recognises them and protects them. The rights themselves exist whether they are thus legalised or not. They are enforced because they are rights, and are not rights because they are enforced." For ourselves, we believe that what makes a claim a right is not the mere fact that it is recognised by law, but that it is morally justifiable. A typical right should combine legal and moral recognition.

(b) To say that the State is the sole creator of rights is to make it absolute. However high a place we may be prepared to give to the State, we are not prepared to go so far as that. Technically no doubt the sovereignty of the State is supreme. But there are certain practical limitations imposed upon it by customs, traditions, history, morality, etc. Laski holds, "The maintenance of right is much more a

question of habit and tradition than of the formality of written enactment." Law is often determined by the customary rule of the community. Not infrequently it is simply the formulation of customs. Justice in very many cases follows customs. Therefore, to argue that all rights are derived from law is unsound.

Besides, the law of every country is subject to constant revision. This shows clearly that law is not the final creator of rights. Higher than law is our conception of right and wrong. As Lord aptly puts it, "A moral order of some kind is the necessary pre-supposition of rights. Apart from it there may be powers, influences, assertions, and efforts, but they are not rights." Or, again, "Rights must have a foundation of *right* as against *wrong*." In the words of Prof. Hocking, "There is a logical distinction between what the law is and what it ought to be."

In extreme cases, the individual may even resist the State. Laski calls it the "right" of resistance, while T. H. Green would regard it as the "duty" of resistance. According to Laski, the individual can have rights against the State, just as much as the State can have rights against the individual. "My duty...to the State is, above all, my duty to the ideal the actual State must seek to serve."\*

(c) Some of the advocates of the legal theory of rights seek to get out of the difficulty by saying that the State is only the creator of legal rights. But when they say this they are not saying anything profound. They are guilty of tautology. It is like saying man begets a human child. The defect with the legal

\* Laski : A Grammar of Politics, p.

theory is that it does not cover the whole scope of rights. Whether rights are derived from history, customs or law, they all require a moral basis. The legal theory does not enable us to decide whether the rights that are recognised are the rights that ought to be recognised. It does not help us to make the State what it should be. Therefore, it seems clear that we need an external standard for judging the State, and that standard is supplied by the law of personality. "Personality," in the words of Lord, "is more than citizenship." Looking at the question from the point of view of social utility, Laski remarks, "A legal theory of rights ..needs, for its understanding, a test in terms of a criterion external to itself. When we say that a man has the right to bestow his possessions as he wills, we state a fact ; but we do not thereby determine whether he ought to have that right. When we say that a deaf-mute has the right to marry, we mean that no church and no register can refuse, in proper circumstances, the performance of the necessary ceremonial; but we do not mean that we think he ought to have the right. At the back of any legal theory there is a system of presumptions each one of which requires a careful explanation before it can be admitted as valid for politics."\*

*Truth in the theory*—(a) While the arguments advanced above go to show that the legal theory cannot give us a satisfactory view of rights, yet the theory cannot be dismissed lightly. We are not prepared to go to the extent of saying that rights are possible apart from the State. Claims which are essential to the moral development of man, and which are violated or ignored by the State, can at best be only potential

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\* Laski : *A Grammar of Politics*, p. 91.

rights. They are the raw material or ground of rights, but are not full-fledged rights. It is desirable that in democratic countries at least, where presumably the general will of the people can bring about necessary changes in a peaceable manner, all our rights should win legal recognition. But this is not the same as saying that whatever has legal recognition behind it is necessarily a right. It may be only a technical right. In days gone by landlords in England were allowed to ride roughshod over their tenants' property. Yet nobody to-day would justify it or dare claim it as a right. Conversely, new rights may have to be created, and we may have to go through a period of constitutional agitation, struggle, and even the "duty" of resistance before such rights are recognised.

(b) As said already, a typical right should have both a legal and a moral aspect. To quote from Bosanquet, "A right .. has both a legal and a moral reference. It is a claim which can be enforced at law, which no moral imperative can be; but it is also recognised to be a claim which ought to be capable of enforcement at law, and thus it has a moral aspect.....A typical 'right' unites the two sides. It both is, and ought to be, capable of being enforced at law."\*

From the legal point of view, Holland defines right as "one man's capacity of influencing the acts of another, by means not of his own strength, but of the opinion or the force of society". A legal right in the strictest sense, he says, is "a capacity residing in one man of controlling with the assent and assistance of the State, the actions of others."† This, of course, is an incomplete view of rights and needs to be supplemented by the moral view. On the analogy of Holland's legal definition, Ritchie defines a moral right as

\* B. Bosanquet: The Philosophical Theory of the State, p. 187.

† Holland: Jurisprudence (2nd Ed.) pp. 61—62.

"a capacity residing in one man of controlling with the assent and assistance, or at least without the opposition, of public opinion," or as "the claim of an individual upon others recognised by society, irrespective of its recognition by the State."\*

**3. The Historical Theory of Rights.**—This theory can be summed up in the sentence, "History makes right." It holds that rights are the crystallisation of customs. We are familiar with the phenomenon of long-standing customs assuming in course of time the form of rights. If a person has been receiving a birthday present from a friend for a number of years, he soon comes to imagine it as a right. What is a pure gratuity becomes a custom and one expects it as a matter of course. In some of the English public schools, we are told that when a boy receives a plum cake from home all his school mates have a "right" to a share in it, because it is a custom of the place. The right of way on the public road is a customary right. In cases of divorce the amount of alimony is adjusted not according to the cost of living, but according to the kind of life to which a person is used. As Ritchie remarks, we often find that "those rights which people think they ought to have are just those rights which they have been accustomed to have, or which they have a tradition (whether true or false) of having once possessed ..Custom is primitive law."† Many of the so-called natural rights, when scrutinised carefully, turn out to be claims which have "the sanction of the longest and the least broken custom",‡ while claims which are of quite recent growth or are not widely adopted are regarded as "conventional."

Edmund Burke has observed that the French Revolution was based on the abstract rights of man, while the English

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\* D. G. Ritchie: *Natural Rights*, pp. 78-79.

† *Ibid.*, p. 82.

‡ *Ibid.*

Revolution was based on the customary rights of Englishmen. This statement contains much truth. While as an historical fact the French Revolution was provoked by the conditions which prevailed in 18th century France, it had for its battle-cry the abstract principles of liberty, equality, and fraternity, applicable to all men. The English Revolution, on the contrary, was simply a re-assertion of the rights that Englishmen had enjoyed from very early days and which had found expression in such documents as the Magna Carta and the Petition of Right. In fact, the entire constitutional history of England is summed up by some writers as a struggle for "liberties," as against liberty.

*Criticism.—*

No doubt a large number of our rights are rooted in customs. But to say that all our rights can be traced back to ancient customs is a clear exaggeration. The late Prof. Sumner of Yale claims that the *mores* or customs of a people can make anything right. We do not accept this point of view. In criticising it, Hocking asks "was slavery right when it was lawful? Was infanticide right?", and his answer is in the negative. According to him, although slavery was customary in most parts of the world, it was never right. The weight of academic opinion, however, is that slavery was a relative right, *i. e.*, right at one time, but not right now, when the moral sense of man is more fully developed. The difficulty with this point of view is that if right is always in relation to custom, any reform is impossible. The abolition of Satee, the Sarda Marriage Act, and the present-day agitation in favour of temple entry for the depressed classes are to a large extent violations of the well-established customs of the country. Yet enlightened public opinion has no hesitation in supporting such reforms. Prof. Hocking rightly

concludes that it is just as foolish to say that custom is always right as to say that law makes right. There is a further court of appeal, and this court is the law of personality. The same author goes on to say that the historical theory either gives no guidance at all, or else false guidance. It must, therefore, remain "a rather helpless method unless lighted up by independent sources of interpretation." "History cannot be ignored ; but history cannot be relied on alone."\* In the very nature of the case, history cannot give an absolute right or standard.

**4.—The Social Welfare or the Social Expediency Theory of Rights.**—From the point of view of this theory rights are conditions of social welfare. They are the creations of society. Advocates of this theory like Dean Pound and Prof. Chafee hold that law, custom, natural right, etc should all yield to what is socially useful or socially desirable. Rights, says Prof. Chafee, are determined by a balance of interests. The right of speech, for instance, is not unlimited. It is determined by considerations of social expediency.

The Utilitarians in general support this theory of rights. Bentham and Mill expressly advocate the principle of utility "in opposition both (1) to the mere following of custom or external authority, and (2) to the arbitrary appeal to the voice of nature speaking in the human heart—an appeal which can be made in support of abuses, as well as in support of the revolt against them."† They set up the principle of "the greatest happiness of the greatest number" as the criterion by which to judge of what ought to be. They believe that utility can be determined by means of reason and experience.

Following up the Utilitarian tradition in a very much modified form, Laski makes the test of rights utility, and

\* W. E. Hocking : Law and Rights, p. 7.

† D. G. Ritchie: Natural Rights, p. 87.

defines the utility of a right as "its value to all the members of the State."\* According to him, the claims which the State must recognise "are those which in the light of history, involve disaster when they are unfulfilled."† "Our rights are not independent of society, but inherent in it. We have them, that is to say, for its protection as well as for our own."‡ "Rights, therefore, are correlative with functions. I have them that I may make my contribution to the social end. I have no right to act unsocially. I have no claim to receive without the attempt, at least, to pay for what I receive. Function is thus implicit in right."‡ "I have ....no right to do as I like. My rights are built always upon the relation my function has to the well being of society; and the claims I make must, clearly enough, be claims that are necessary to the proper performance of my function. My demands upon society, in this view, are demands which ought to receive recognition because a recognisable public interest is involved in their recognition."¶ "I cannot have rights against the public welfare, for that, ultimately, is to give me rights against a welfare which is intimately and inseparably associated with my own "||

*Criticism.*—The social welfare theory of rights no doubt has a great deal to commend it. We consider it the best of the four theories that we have discussed so far. Nevertheless, it has some serious defects.

(a) Public welfare is undoubtedly a good test of rights. But difficulty arises when we begin to define the term 'public welfare.' Does it mean "the greatest happiness of the greatest number," majority

\*H. J. Laski: *A Grammar of Politics*, p. 92.

† " " " " p. 93.

‡ " " " " p. 94.

¶ " " " " p. 95.

||H. J. Laski: *A Grammar of Politics*, p. 96.

interest, public opinion or what the government of the day considers to be the common good? Even if it means any of these, it does not help us much, because these terms are equally vague and indefinite. "Greatest happiness" as such cannot be measured. The community as such has no feeling.

(b) Another defect of this theory is that social welfare may infringe on what we call our individual rights. It may lead to the position that it is right to do a little injury to an individual in order to do a great deal of good to the community—to the doctrine that the end justifies the means. It may mean in practice general welfare overruling what is admitted to be a private right. The principle of social expediency is a dangerous principle with which to work. Fortunately, in a good many cases the individual right coincides with the general welfare. Trouble arises only when the two conflict. When such conflicts arise, advocates of the social welfare theory are bound to prefer common interest to individual good. Prof. Hocking tells the story of a rear-admiral who, when asked what he would do if he were called upon to sacrifice an innocent man under his charge for the sake of the general morale, had no hesitation in saying that he would sacrifice him. What does it matter if one life is to be thrown away for the sake of preserving general discipline and ensuring the safety of the group?

For ourselves we believe that this is a mistaken point of view. Extreme public necessity cannot make anything right. The Supreme Court of the U.S.A. was perfectly justified in deciding in a case in which certain shipwrecked mariners killed one of their mates for food that under no condition should a person be killed. As N. Wilde observes, "If rights are created by the grant of society, the

individual is without appeal and helplessly dependent upon its arbitrary will." \*

### 5. The Idealistic or Personality Theory of Rights.—

From the point of view of this theory, rights may be defined as the outer conditions essential to man's inner development. Apropos of this, Krause (quoted by Green) describes the system of rights as "the organic whole of the outward conditions necessary to the rational life." † Writing in the same vein, Henrici (also quoted by Green) defines a right as "that which is really necessary to the maintenance of material conditions essential to the existence and perfection of human personality" ‡ "A right," says N. Wilde, "is a reasonable claim to freedom in the exercise of certain activities." ‡ All this means in simple language that without rights no man can become the best self that he is capable of becoming. The supreme right of every man is the right of personality. By this we mean that it is the right and duty of every human being freely to develop all that he has it in him to become. Every other right is derived from this one fundamental right. Even such important rights as the right to life, the right to liberty, the right to property, etc. are not absolute rights. They are conditional or presumptive. They are relative to the right of personality. Thus, I have a right to life only to the extent to which it is necessary for my highest development. I have no right to commit suicide, for I can never tell with certainty that I have reached the highest perfection possible for me. The moment I abuse my right, society is perfectly justified in taking it away from me. Green speaks of rights as powers "necessary to the fulfilment of man's vocation as a moral being." ¶

\* N. Wilde: *The Ethical Basis of the State*, p. 124.

† T. H. Green: *Principles of Political Obligation*, p. 35, footnote.

‡ N. Wilde: *The Ethical Basis of the State*, p. 115.

¶ T. H. Green: *Principles of Political Obligation*, p. 43.

This theory looks at rights from a highly moral point of view. Rights are powers which I can claim from society on a moral plane. They are rooted in the mind or soul of man. They are powers granted to me by society in order that I may, with others, realise a common good of which my good is an intrinsic part. This truth we expressed earlier by saying that every right requires social recognition. To put it more explicitly, every time I claim a right I must be able to establish two things. In the first place, I must be able to convince society that the right which I claim is absolutely necessary to my self-development. Secondly, I must convince society that, in making such a claim, I am not in any way interfering with the similar claims of others to their self-development. Thus, when I claim a right to life, it means 'a) that I claim it of some one, (b) that I am willing to respect the same or similar right in others, and 'c) that I give a tacit undertaking to society that I shall use this right in my truest interest. It is in this sense that we must understand the statement that rights and duties are correlative. Rights are therefore derived from membership in society. Nobody has a right to do as he likes. As N. Wilde puts it, "A right is a freedom of action possessed by a man in virtue of his occupying a certain place and fulfilling a certain function in a social order." \*

Putting the same truth in other words, we may say that every right has for its basis a rational or responsible wish. Whimsical or irresponsible wishes can never become rights. My wish for anything should be coincident with some wish or another of the person or persons to whom I address my claim. In the words of Prof. Hocking, "a right is a claim of any wish for fulfilment which is coincident with a common social interest." "Because every true right has a moral basis, I can claim my right with a consciousness of power over the addressee (i. e. the person of whom I claim the right), even

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\* N. Wilde: The Ethical Basis of the State, p. 12.

though physically I may be the weakest of human beings. In the fable of the wolf and the lamb, the wolf certainly had a "natural" right to the flesh of the lamb, but the lamb made a rational and moral appeal to the highest in the wolf. Likewise, I should not fish in forbidden waters, because in so doing I act contrary to the dictates of my conscience, and thereby violate the laws of my personality. Dr. Hocking remarks that whenever one person claims a right against another, he says to that person, "If you infringe my rights you hurt yourself in a very central place." Slavery injures the slave-holder even more than it injures the slave. What the slave suffers is to a large extent physical, while the injury sustained by the slave-holder is moral. In recognising the rights of others I honour my own strength. In killing an innocent person I kill something of myself.

*Criticism and appreciation.*

(a) On the whole, the idealistic or personality theory of rights seems most satisfactory. Difficulty may arise when we begin to reduce the conception of personality to practical terms. It may be asked by what standard is the State to judge the conditions required by each of its citizens for his fullest self-development. Is not the idea of personality after all a subjective idea? What do we know of other people's destinies? These are no doubt weighty objections. Our answer to them is that, according to the idealistic point of view, the State does not offer to provide for man whatever will tend to promote his good life. Assuming that everybody tries to become what he is capable of becoming, it grants to all certain minimum rights, and leaves each person free to make an individual use of them. It recognises that elementary rights must be the same for all and that differentiation can arise only after these are secured.

(b) It is conceivable that to a very large extent the social welfare theory and the idealistic theory in their relation to rights will go hand in hand, because individual good and social good are intimately related. But if and when individual good and social good come into conflict, the idealistic theory will go one way and the social welfare theory another. The idealistic theory refuses to sacrifice any human being to the development of some one else. It believes with Kant that no man is to be treated as simply a means to another's end; it calls upon everybody to treat humanity in his own person and in the persons of others always as an end and never merely as a means.

(c) One of the chief merits of this theory is that, unlike the theory of natural rights which posits too many absolutes, and the other three theories which posit no absolutes whatever, it lays down one absolute right, *viz.* the right of personality, and derives every other right from it. Because there is only one absolute right there is no inner contradiction, as in the case of the theory of natural rights. Besides, this theory furnishes a safe test of rights which can be applied at all times, and herein it is superior to the legal, historical, and social welfare theories. The one absolute right of all human beings is the right of personality. It is invariable. It is independent of time and place. As Dr. Hocking says, it holds against God himself. An argument which this writer urges in favour of immortality is that God or the cosmological creator who is responsible for my being here is in honour bound to give me further opportunity to continue and complete the upward struggle which I have begun on earth and thus fulfil the law of my personality.

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## CHAPTER VIII

### PARTICULAR RIGHTS: The Right to Life.

All modern civilized governments recognise certain rights as fundamental, and each in its own way endeavours to give a practical expression to them. There is no consensus of opinion either among governments or among political thinkers concerning the extent of these rights or the way in which they should be enforced. In our discussion we shall concern ourselves not merely with existing rights but also with ideal rights, *i.e.* rights which we ought to have in a well-constituted society. The particular rights which we propose to consider are :—

- (1) The right to life
- (2) " " " liberty
- (3) " " " equality
- (4) " " " property
- (5) Political rights
- (6) The "right" of resistance to the State.

#### THE RIGHT TO LIFE—

It is obvious that this is the most fundamental of all rights, for without it no man can exercise any rights whatever. T. H. Green combines the right to life with the right to liberty and regards the two rights as constituting one single right, *viz.*, the right to free life. He rightly argues that life is valueless without liberty. The two ideas imply each other. The right to life is empty of all meaning if the subject has no control over it. It will be universally admitted that the freedom to plan one's life in

one's own way is a most essential condition for the development of personality. The slave is an animated tool. He really does not enjoy the right to life, because he does not have the right to control his life. Therefore, liberty is a necessary accompaniment of life. Conversely, it is the use made of life which gives one the right to life. No one has the right to abuse his life. The ethical basis of the right to free life is the individual's capacity for membership in society, *i. e.*, the presence in him, of "the conception of a well-being as common to *self* with *others*."<sup>\*</sup>

While all rights are 'personal' in the moral sense, the right to life and the right to liberty are 'personal' in a special sense in addition; for as Green contends, the preservation of the body from the violence of other men and the using of it as an instrument only of one's own will are the conditions of exercising all other rights. These two rights, in other words, have to do directly with the person of the individual.

A study of history shows that such an elementary right as the right to free life has only gradually been recognised. Early societies did not respect the right to free life of man as man. They recognised it only for members of the same family or tribe. It is only in comparatively recent times that the right has come to be recognised as belonging to all men, irrespective of their family or tribal connections. The influences which have helped to bring about the change, as pointed out by Green, are—

- (a) Roman equity which led to the recognition of rights independent of citizenship in a particular State;
- (b) the doctrine of a 'law of nature,' applicable to all men, popularised by the Stoics; and
- (c) the Christian conception of a universal brotherhood.

In spite of the great advances that have been made

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\* T. H. Green: *Principles of Political Obligation*, p. 156.

in many directions, the right of every individual to free life is only negatively recognised in modern societies. As indicated by Green, all that we do is to enact that no man shall be used by other men as a means against his will; but "we often leave him without the chance of using himself for any social end at all."\*

**Basis of the right to life.**—Confining ourselves for the time being to the right to life, as against the right to free life, let us enquire into its basis and its implications. Man shares with animals the instinct of self-preservation, and that instinct asserts itself when anyone interferes with his safety. But that instinct alone cannot justify the "right" to life. Not everything which is instinctive is necessarily a right. Before conceding to the individual his right to life, society should convince itself that such a right is essential to his self-development as well as valuable to itself. At a later stage, the natural instinct to preserve life "may be furthered by reflection, and it may come to be thought a *duty* to preserve one's life."†

A second basis which may be adduced in favour of the "right" to life is the natural repugnance of the average man to take the life of any sentient being. Many of us have a natural compunction against putting life out of existence. Such an explanation, however, fails to justify the "right" to life, because we cannot build a system of rights upon mere instincts and emotions. Besides, it does not explain the readiness with which most people are ready to kill their fellow-human beings in warfare in the name of their country, nor the ever-present phenomenon of wilful murder.

All this leads us to say that the true basis of the right to life is the right of self-development. The right to life is

\* T. H. Green: *Ibid*, p. 159.

† D. G. Ritchie: *Natural Rights*, p. 119.

not unconditional. Only to the extent to which it is used in the interest of the development of one's personality can it be justified.

**Implications of the right to life.**—The right to life implies—

- (a) the duty to live,
- (b) the duty not to commit murder,
- (c) the right to self-defence,
- (d) the right to reproduce life coupled with the right to be born without heavy handicaps, and
- (e) the right to maintenance or subsistence and the right to work.

1. *The duty to live.*—Neither from his own point of view nor from that of society is an individual justified in taking his life. Hence it is that attempt at suicide is punishable in all States. From the point of view of the individual, no one knows at any time that he has become all that he is capable of becoming. So long as there is life, there is hope. History furnishes many instances of persons in whom the mental powers have continued to grow even after the body has begun to decay. In other cases, even if the mental powers do not grow, one's plans and thoughts continue to develop almost indefinitely. Therefore, at least, in most cases, one does not know when one has ceased to grow. Most cases of suicide are a retreat from the realities of life and an expression of cowardice. Modern thought rightly refuses to countenance suicide, except, perhaps, in the case of incurable disease.

Suicide stands condemned from the side of society also. Thus, Gilchrist remarks, "From the point of view of general welfare, every life is valuable, and to murder another or murder oneself means the elimination of an individuality which has duties as well as rights. One cannot claim security to one's person from encroachment by others if one is allowed

to kill oneself by one's own free act. Suicide, therefore, is an injury to society, and those who attempt it are punished."\*

If we turn back to ancient thought, we find that suicide was supported by the Stoics who regarded death as an act of the will. To them, the determination to end life was an expression of bravery, and not of cowardice. Death was more welcome than life, because it was the way out of time into eternity. This teaching of the Stoics was strenuously opposed by the Epicureans, who argued that we had no right to quit life at will inasmuch as we had been placed in this world by God and were to consider ourselves as soldiers in the battle of life.

In the Middle Ages St. Thomas Aquinas voiced a powerful protest against suicide. He lays down unequivocally that "to kill oneself is altogether unlawful, for three reasons. First, because naturally everything loves itself, and consequently everything naturally preserves itself in being, and resists destroying agencies as much as it can. And therefore for any one to kill himself is against a natural inclination, and against the charity wherewith he ought to love himself. And, therefore, the killing of oneself is always a mortal sin, as being against natural law and against charity. Secondly, because all that any part is, is of the whole. But every man is of the community; hence, in killing himself he does an injury to the community. Thirdly, because life is a gift divinely bestowed on man, and subject to His power, 'who killeth and maketh alive.' And, therefore, he who takes his own life sins against God."†

The arguments used by Aquinas are even now the arguments urged against suicide. They are:

(i) suicide is an offence to oneself, because it runs counter

\* R. N. Gilchrist: *Principles of Political Science*, p. 142.

† T. Aquinas, *Summa, 2a, 2ae, qu. 64, art. 5*, quoted by Ritchie, *Natural Rights*, p. 126.

to the instinct of self-preservation and the natural love of self;

(ii) it is an offence to the community because no man belongs to himself exclusively; and

(iii) it is an offence to God, who has placed each one of us in this world with a definite purpose.

James Seth sums up the idealistic point of view with regard to suicide in the following terms: "To despise the body, or to seek to escape from it, as the ascetic does, is as wrong as it is futile. The body is the chief condition of the moral life, its very element and atmosphere.. (Therefore), the destruction of life, or suicide, is an exceeding great sin. Our moral life being physically conditioned, the destruction of the body is an indirect attack upon that life itself. Suicide, being self-destruction, so far as that is possible to us, must always contradict the fundamental ethical principles of self-development."\*

At the most, suicide can only be excused, but not approved. Take, for instance, the case of those suffering from incurable diseases who are a burden to themselves and to others. A question which concerns the moralist and the political theorist alike is whether such a person is justified in taking his life? Regarding this there can be no unanimous opinion. "Not a few physicians have felt the terrible cruelty of a moral code which makes it a positive duty on their part to prolong hopeless suffering. Yet it is clearly a matter that cannot be left to individual responsibility."† In this connection, it is of interest to note that Sir Thomas More suggests in his Utopia the expediency, not merely of permitting but of recommending suicide to those suffering from incurable diseases. Ritchie finds a parallel to this suggestion in the custom of the Greek colony of Massilia (Marseilles), according

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\* James Seth, Ethical Principles, p. 257.

† D. S. Ritchie, Natural Rights, p. 126.

to which a man contemplating suicide was required to apply to the Six Hundred; and if he made out a good case he was allowed a dose of poison !

In some cases of suicide we must blame social conditions rather than the individual.

2. *The duty not to commit murder.*--If one has the right to life, it follows that it is one's duty to refrain from taking the lives of others. Murder is not only a moral wrong but also the most serious legal offence. In most States, the punishment for murder is death, although there is a growing revulsion of feeling against it. The question which concerns us at this point is whether capital punishment is a violation of the right to life of the murderer.

At the very outset, it must be said that the murderer, strictly speaking, has no right to life at all. He forfeits his right to life by the "unassociable will" which he clearly demonstrates. Therefore, the only right which we can possibly consider in his case is the "reversionary right" of being restored to society as a normal member capable of making an individual contribution to the general good. Those who are opposed to the death penalty generally use an argument based on such a reversionary right in defence of their position. Other arguments used by them are:

- (a) Not infrequently a wrong man is sentenced to death, and it is obvious that, after hanging him, there is no way by which the State can undo the wrong done to him.
- (b) Most murderers commit murder under extreme provocation, or in a fit of temporary insanity, and do not generally repeat the crime. Therefore, to condemn them once and for all is unjust. Lord Buckmaster, an ex-Lord Chancellor, believes that a man does not commit murder after methodical calculation.

- (c) The death penalty has a bad effect upon society in that it tends to cheapen human life and makes people callous to human suffering.
- (d) It is a relic of the barbarous times when vindictiveness characterised the dealings of men.
- (e) Many a murderer is an irresponsible person and does not realise the gravity of his crime. Therefore, society should cure or restrain him, but not hang him.
- (f) The death penalty has not acted as a sufficient deterrent, for, in spite of it, murders continue. Summing up the case against the death penalty, Lord Buckmaster declares "reason, justice, and humanity...forbid the continuance of Capital Punishment."

These arguments are strongly controverted by those who believe in the justice and efficacy of capital punishment. Mr. Henry Barker holds that the objections felt to capital punishment are based very largely on a false sentiment for life as mere existence as distinguished from the kind of life that is lived or the use that is made of life. His argument may be summarised as follows:—The right on A's part to have his life held sacred depends upon the common membership of A, B, C, D, &c. But if A uses his right deliberately for anti-social purposes, his right to have his life respected obviously disappears. Society is bound to protect its members by every means possible, by death if necessary. Society is not obliged to maintain the life of a member in society if he deliberately injures the lives of other members. In the case of treason, if banishment is sufficient there is no need for capital punishment. But where a man murders another for his property or something of the sort, the only adequate punishment is death. Such a person is not entitled to life. He is worse than a beast of prey, because he deliberately violates the right to life. Therefore, to defend a person of that kind is perverted sentiment.

Mr. Barker then considers the relevancy of some of the arguments used by those who want to abolish capital punishment.

(a) Sometimes a religious argument is used to the effect that a man is not fit to die, and that the death penalty does not give the murderer time to repent. This argument is irrelevant, for the man is not fit to live.

(b) An argument which is frequently used is that the murderer could not have been in his right mind when the murder was committed. We all know of cases of murder in which there was no motive or purpose for the act. Want of motive may of course be a ground for arguing that the individual concerned did not commit the crime, but it is not a ground for being lenient with him. If there is no motive for the murder, it makes the crime all the worse. If we allow a man of this kind to go scot-free, the result may be that the more barbarous the crime is, the more a man can escape on the plea that he is not in his right mind. The conclusion to which we are thus driven is that we must be able to establish a man's insanity apart from his act of murder, if we are to be lenient with him. What often happens in actual practice is that when every other plea fails, recourse is had to the plea of insanity.

A man cannot and ought not to be punished for an act done when he is insane, for he is not a responsible person. But to say that he is innocent is a mere confusion of thought. An insane person is not a moral person in the strict sense of the term. If his insanity is of a temporary kind, there is ground for treating him as a potential person, like a child who is capable of becoming a normal person. But if he is incurably insane and is a murderer, there is no point in keeping him

alive. He becomes a dangerous animal, and, therefore, it is better to allow the ordinary law to operate and not make any exception.

So from the moral as well as the legal point of view, there is little to be said for the widespread tendency among medical men to stretch the plea of insanity. Unless there is clear proof that the man is not responsible at all, it is well to allow the ordinary law to proceed.

Sir Herbert Stephen, another supporter of capital punishment, holds that the advantages of this form of punishment are "that it gratifies, as no amount of imprisonment can, the natural and healthy resentment of the relations and friends of the murdered person; that it is final and disposes of the matter once and for all; and that it is economical. Why should some dozens of healthy persons, capable of doing much better and more interesting work, be occupied in looking after an ever-growing number of peculiarly wicked and offensive culprits?" As against Lord Buckmaster, this writer believes that capital punishment is an effective check on murder and agrees entirely with the view of the convict who wrote: "They top (hang) a cove out here for slogging a block (killing a warder). That bit of rope, dear Jack, is a great check on a man's temper." As against Lord Buckmaster, once again, he believes that a good many murders are committed after methodical calculation. If allowed to have his way, he would slightly extend the present law so as to include despicable acts of villainy under crimes punishable with death. Similarly, Mr. Barker holds that the time may come when society will refuse to tolerate a habitual criminal who has a permanent incapacity for rights. It may not be worthwhile for society to persevere with such an individual.

Green's views on this difficult question are not entirely clear. He seems to have some hesitation in justifying capital punishment. He holds that there are two grounds on which

this form of punishment may be justified, although he himself throws some doubt on both of them.

- (a) It may be necessary to associate the extremest terror with murder in order to check it as far as possible.
- (b) Murder is such a heinous crime that we may assume that there is a permanent incapacity for rights in the murderer.

As far as the first justification is concerned, Green asks whether with sufficient police system and detection, the need for extreme terror may not be questioned. Our reply to it is:

- (i) No police system, however efficient it may be, can completely prevent murder.
- (ii) The certainty of being punished may not be an effective check—at least not as effective as the certainty of being hanged.
- (iii) Green's view of punishment as a means of deterring other possible criminals seems to be a profoundly wrong view. The criminal is punished in order to protect society, although incidentally the penalty he suffers may deter others.

As regards the second justification, Green asks whether we in our ignorance can judge a permanent incapacity for rights. He seems to believe that even the murderer may have the reversionary right of being made capable of life in society. In opposition to this point of view, Mr. Barker argues that the murderer has forfeited his right once and for all and that, therefore, we cannot speak of his "rights" in the future.

*Conclusion.*—The conclusion to which we are led is that in clear cases of murder, the death penalty is justifiable, at least at the present stage of human development. We should take special care, however, to see that capital punishment is as rigidly restricted as possible. To award the death penalty to lesser crimes is thoroughly wrong, for the fact that lesser crimes are not punished with death presents a strong motive

to the lesser criminal not to risk capital punishment if he can avoid it. If we had recourse to capital punishment for lesser crimes, we would be increasing the number of murders instead of decreasing them, for the criminal would adopt the attitude: "As well be hanged for a sheep as for a lamb." Besides, it is likely that juries will refuse to convict on the ground that we cannot equate murder with other forms of crime, so far as their moral depravity or practical consequences are concerned.

While we believe in capital punishment in a limited number of cases, we favour at the same time an increasing use of indeterminate sentences. Those who want to abolish capital punishment generally substitute for it life imprisonment. This is not much of an improvement, for to a cultured and sensitive individual life imprisonment is even worse than the death penalty. "One as much as the other is an absolute deprivation of free social life, and of the possibilities of moral development which that life affords."<sup>\*</sup> Therefore, the only justification for a sentence of perpetual imprisonment is the possibility that the prisoner may be released after a time on showing amendment of character. This means that imprisonment should be "so modified as to allow the prisoner a certain amount of liberty."<sup>†</sup>

3. *The right to self defence.*—It is generally assumed that the right to preserve life includes the right to defend life. Thus, Gilchrist remarks that "for self preservation force may rightly be used even if that force may kill others," although he admits that "force of this kind may only be used as an extreme measure when no other means will suffice."<sup>‡</sup> As to whether in a given case the force used in the defence of oneself was justified or not is left for the law courts to decide. The prevailing belief is that self-defence is justifiable, but not aggression. The difficulty with this view is that it is not

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\* T. H. Green: *Principles of Political Obligation*, p. 204.

† *Ibid.*

‡ R. N. Gilchrist: *Principles of Political Science*, p. 142.

always easy to define such terms as "self-defence" and "aggression." Ritchie holds "To be able to call a measure 'a measure of self-defence' does not itself prove that measure to be justifiable, nor does calling it 'a measure of aggression' of itself prove it unjustifiable. We must know *what* is being defended and on *what* aggression is being made, before we can know whether the defence or the aggression is justifiable in the interests of some particular society, or of humanity as a whole, or of some important part of it."\*

A question which arises at this point is in reference to war. It may well be asked, if the individual has the right to defend himself, has not organised society also the right to defend itself? Besides, is the State justified in calling upon the individual or citizen to lay down his life on the battlefield? Is this not an interference with his "right to life"? Thomas Hobbes, who consistently develops his ideas from certain premises argues that, under some specified circumstances, the individual is justified in refusing to take part in war, because the primary purpose for which he agreed to surrender his natural rights and enter into a civil state was to safeguard his life.

When we turn from Hobbes to other recognised political thinkers, we find a diversity of opinion. T. H. Green, in whom political philosophy reaches a high water-mark, finds difficulty in justifying war. His general point of view is that war can never be absolutely right. It can only be relatively right. War does not belong to the perfect State. It belongs rather to a particular State in its imperfect actuality. "It may be relatively right, in the sense of being a wrong which has to be done in order to right a wrong; but the wrong that is righted.....still remains wrong; and those who committed that ancient wrong are in their dusty graves responsible for the new wrong which put it right."†

\* D. G. Ritchie: *Natural Rights*, p. 120.

† E. Barker: *Political Thought in England from Spencer to-day*, p. 46.

Although Green admits that war at best is only a relative right, he does not follow up this admission to the extent of asking whether the individual is justified in determining for himself whether a given war is relatively right or not. Neither does he face the question of the extent to which the State is justified in compelling an individual who judges a war to be relatively wrong, to risk his life on the battlefield.

Green goes on to say that war is not murder in the moral sense. Murder means that the motive is 'malice' and the object the gaining of one's private ends. The soldier is not a murderer; neither are those who are ultimately responsible for the war, as they cannot be said to have any ill-will towards the persons who happened to be killed in the war. Nevertheless, the right of free life is violated in war. The deaths in a battle are caused distinctly by human agency and intentional agency. Therefore, it is a moral wrong. Even if it be argued that war calls out such virtues as heroism, self-sacrifice, etc., and that it is a necessary factor in human progress, it does not alter the fact that the destruction of life in war is always a wrong. War violates human rights.

It is not likely that Green would countenance such excuses for war as are embodied in phrases like "defensive war," "righteous war," "war to end war," etc. He rightly observes that most wars of the last four hundred years have *not* been wars for political liberty, but have arisen from despotic ambition or national vanity—and we may add, as regards recent times, from a desire for economic gain. He further says that, as a matter of fact, the majority of people who take part in wars are not actuated by laudable, but by selfish motives. General human selfishness, he says, is the cause of war.

To speak of an inevitable conflict between States is an absurdity. The gain of one State does not necessarily mean the loss of another. "It is not because states exist, but because

they do not fulfill their functions as states in maintaining and harmonising general rights, that such conflicts are necessary."\* Like a true idealist, Green dreamed of a time when not only the need for war would disappear, but even the impulse to it. He dreamed also of an "international court with authority resting on the consent of individual states."

Hegel takes a totally different point of view. According to him, "the state of war shows the omnipotence of the state in its individuality. Country and fatherland are then the power which convicts of nullity the independence of individuals." It is no wonder that this exaggerated view of the State leads Hegel to "a belief in the divinity of the nation."

If Green approaches the ethics of war from the standpoint of the individual's "right to free life" in virtue of his common humanity, Bosanquet approaches it from the standpoint of the "rights of the state," and has little hesitation in justifying war. He believes in the personality of the State and its moral responsibility. The State, he says, is "the guardian of moral interests, and must be faithful to its duty."† "As the individual must ultimately follow his conscience to the end, so the state, if it is to be morally responsible must follow its own."‡ This means that when the claims of mere life collide with the "claims of better life," "every being and agency that is truly human, individual or collective, knows what it has to do"—go to war! Bosanquet goes on to say, "I believe in the League of Nations as the hope and refuge of mankind; but I do not believe that any moral being can divest itself of moral responsibility, or limit that responsibility's *ultima ratio* (the ultimate court of appeal)."§

Although, according to Bosanquet, the State is a moral

\* T. H. Green: *Principles of Political Obligation*, p. xix.

† B. Bosanquet: *The Philosophical Theory of the State*, p. L.

‡ *Ibid.*

§ *Ibid.*

agent and has moral obligations to fulfill, its moral obligations are not the same as those of the individual. It is futile to apply terms like murder and theft to the actions of the State. This does not mean that "the interests of the State justify everything in the way of departures from current personal morality."<sup>\*</sup> But since "duties are relative to positions," the State may, and even must, do things which the individual may not and must not do. "In these great operations of great organisations some individuals must be injured."<sup>†</sup> "What is necessary is to distinguish carefully the position and true functions of all moral beings, but especially of powerful organisations, and to strive that no more harm may be done than is inevitable."<sup>‡</sup>

For ourselves, we agree with Green in thinking that war is a violation of the individual's right to free life. Under certain circumstances, it may be the lesser of two evils, but it is an evil nevertheless. To argue, as Bosanquet does, that war may be in accordance with the conscience of the State seems unconvincing. Modern warfare involves rapid and often secret action. It does not give enough time or opportunity to the individual (and even, perhaps, to the responsible officers of the State) to decide its rightness or wrongness. It is normally accompanied by cruelty, fraud, and treachery. It is an economic drain and involves waste of life and thought. It is an incentive to individuals and groups of individuals to use force for the gaining of private ends. In the light of all this, we have no hesitation in accepting the conclusion of Burns, "Democracy and war are irreconcilable, and therefore, the ideal of democracy must provide an alternative to war as an institution."<sup>§</sup>

#### 4. The right to reproduce life coupled with the right

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\* B. Bosanquet: *The Philosophical Theory of the State*, p. Lii.

† Ibid: p. Liii.

‡ Ibid: p. Liv.

§ C. D. Burns: *Political Ideals*, p. 295.

**to be born without heavy handicaps.**—A primary instinct of man which is to be placed alongside of the instinct of self-preservation is the instinct of sex. From this it would appear that the right to reproduce life was almost a "natural" right. Yet it is not a right which can be claimed absolutely. From the very early days certain restrictions and prohibitions regarding sex-relations have been observed. The tribal man was not allowed to marry within his own totem. Endogamy as regards the tribe and exogamy with regard to the clan were the order of the day. Even to-day in many countries legal preference is given to monogamy; marriages are excluded within certain prohibited degrees, and penalties are attached to certain sexual acts. In addition to these legal restrictions, there are social customs which regulate and even restrict the sex life of man. Therefore, to say that the State (or society) has no right to interfere with people's marital relations is not in keeping with facts. In modern society, it is only reasonable that in the interest of society in general and of the offspring in particular, such people as hereditary and incurable lunatics, idiots, and imbeciles, hereditary deaf mutes, lepers, etc. should be prohibited from marrying and prevented from propagating their kind.

In close connection with the right to reproduce life, we may discuss a right which is not yet asserted to any great extent, but which in some form or other will have to be included in the organisation of progressive societies—the right to be born without undue handicaps. A question which is of more than mere academic interest is whether the right to life includes the right to be well-born. The fact that children do not have a voice in the choosing of their parents places a grave responsibility upon parents and society to see to it that no child comes into the world which is unable by virtue of its birth to take its proper place in the common life of society.

Children have a right to start life on fair terms. This

means that, among other things, we should encourage those at the top of the eugenic ladder to breed fast and discourage those at the bottom from breeding at all. Mothers' pensions, widows' aids, gratuities to parents who bring into existence a large number of eugenically desirable children, State aid for the education of such children, legal fixation of the age of marriage, the requiring of health certificates for the begetting of children, are all means to the end that we have in view. In line with these suggestions, Professor Lorimer (quoted by Ritchie) says: "A man who cannot bestow a human education on his children has no more natural right to marry than a man who cannot beget them." \*

The rights of children are potential. The Greeks and other ancient people who exposed infants did not recognise these potential rights. A child has rights because of its future destiny. A correlative which goes along with this truth is that it is the duty of society to check the increase of unfit and defective children.

A question of very great practical importance which calls for our consideration at this point is the rights of hopeless idiots, imbeciles, and incurable lunatics. Do they have a right to free life? Should their lives be preserved even if there be no possibility of a self-conscious existence? Should they be allowed to be fruitful and multiply? Green uses three arguments for allowing such people to live. These arguments are:—

- (i) We do not consider the lives of these unfortunates or of others as though they were confined to this world alone. Life is continuous. Therefore, even if there is no chance of development for these unfortunates in this life, we assume that they will have a capacity to grow in a future life. This argument is altogether irrelevant. We are concerned with growth here and now and not with growth in some

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\* D. G. Ritchie: *Natural Rights*, p. 128.

future existence.

(ii) "The distinction between curable and incurable, between complete and incomplete social incapacity is so indefinite that we cannot in any case safely assume it to be such as to extinguish the right to life." \* This argument is no doubt a weighty one. We need to observe, however, that since the days of Green medical science has advanced so far that, in certain cases, it can determine beyond all doubt that an individual human being is permanently incapable of moral and intellectual growth. In dealing with these cases we are dealing only with a body in a human frame. There is no human mind. Theoretically speaking, such a body in a human frame has no rights, because the very basis of human life is lacking.

(iii) Even if the incapacity is permanently irremediable, "the patient has a social function....., a passive function as the object of affectionate ministrations arising out of family instincts and memories." † This is an unduly weak argument. What it proposes is that the hopeless imbeciles and incurable lunatics should be preserved in life, because ministration to their needs calls out the finer elements of human nature. They are objects of pity and give us a chance of showing our finer nature. This appears to us to be a wrong kind of sentimentalism. Why should the life of normal human beings be sacrificed in order to maintain hopeless imbeciles? Is the sacrifice expended on a worthy cause? In theory, at least, those who are hopelessly imbecile have no right to life.

Notwithstanding the above theoretical arguments, we

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\* T. H. Green: Principles of Political Obligation, p. 158.

† Ibid.

believe that hopeless idiots, imbeciles, and lunatics should be preserved in life. We should keep intact the instinct of repugnance to the wanton taking of life. Reasons of humanity require it. At the same time, in the interests of posterity, it is necessary that hereditary defectives and hopelessly diseased persons—and we may add, criminals and drunkards of the worst type—should be prevented from propagating their kind. To this end they should be segregated from the rest of the community, and, wherever necessary, sterilised against the possibility of breeding their kind.

#### 5. The right to maintenance and the right to work.

A right which is coming to be asserted more and more in our modern world is the right to work. It is claimed that a corollary of the right to life is the right to have life upheld when the individual is unable to do so by his own effort. It needs no argument to show that every individual requires a certain amount of the material goods of life to be able to play his part in society. Without such substance, man will soon sink to the level of the brute creation. The socialists claim that the labourer has the right to work and that, when he is thrown out of work, he must be fully supported by society. Is this claim justifiable?

(i) It is obvious that society should not allow any of its members to starve. With all the scientific discoveries and inventions that man has made and with the growing social consciousness among thoughtful men, it should be possible to banish starvation from the face of the earth. This will mean, among other things, a minimum wage law, a radical redistribution of property among the members of society, severe restrictions on bequest and inheritance, discouragement of the idle rich, prohibition of waste and display, and in the last resort, some sort of Poor Law together with a Workhouse test.

(ii) So far as poverty and unemployment are the fault of

society, it is the business of society to organise itself in some better way. For, as Laski says, "Either the State must control industrial power in the interest of its citizens or industrial power will control the state in the interests of its possessors."\* Poverty and unemployment due to the idleness or inefficiency of the worker should be treated differently from poverty and unemployment due to society.

(iii) The old *laissez faire* theory in the economic field at least is fast becoming a dead letter. To use the phraseology of Laski, we need to substitute for the eighteenth century Police State the twentieth century social service State. If the individual is to have complete economic freedom, he should recognise his obligation to find work for himself and to maintain himself. But such freedom does not always lead to the most desirable results. So the State should more and more undertake the duty of finding employment for the able-bodied who are eager for work but cannot find it, and make provisions of other kind for the aged and infirm who are unable to work. If the State is to find employment for its dependent members, it follows that they should be prepared to do whatever work the State can provide. Laski writes "A prime minister who has been overthrown has not the right to be provided with labour of an identical character. Society cannot afford each man the choice of the effort he will make..... It needs a supply of goods and services to maintain its life. The right to work can mean no more than the right to be occupied in producing some share of those goods and services."†

\* H. J. Laski : A. Grammar of Politics, p. 109.

† Ibid. p. 106.

(iv) When the individual is thrown out of employment and no work can be found for him for the time being, it is the duty of the State to provide him a maintenance. A bonus or allowance to which the individual himself has not contributed a certain share does not commend itself to us. It is bound to increase pauperism and demoralise the working classes. The lot of the pauper is not to be made better than that of the hard-working, independent labourer. All this means that every well-ordered State should have a system of unemployment benefit to which the working people themselves would make some contribution. In Laski's judgment "the principle of insurance against unemployment is integral to the conception of the State."\* "To be his best self a man must work, and..... the absence of work must mean provision until employment again offers the opportunity of work."\*

(v) "A man has not only the right to work. He has the right also to be paid an adequate wage for his labour"† i. e., a wage necessary for "creative citizenship." All men need food, clothing, and shelter, a certain amount of leisure, and opportunity for education and culture, and for the development of the best that is in them ; and no man should be allowed to fall below this standard. "The right to an adequate wage," says Laski, "does not imply equality of income ; but it does.....imply that there must be a sufficiency for all before there is a superfluity for some."† The first need of the masses is, therefore, "to realise the right to adequate payment for their effort."§

\* H. J. Laski : A Grammar of Politics, p. 106.

† Ibid. p. 107.

§ Ibid. p. 109.

A corollary which follows from the right to an adequate wage is the right to reasonable hours of labour. We shall not go into the details of this right as it will carry us far afield. It is sufficient to mention it in order to show its importance.

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## CHAPTER IX

### PARTICULAR RIGHTS: The Right of Liberty.

#### 1. MEANING OF LIBERTY.

As D. G. Ritchie remarks, "Next to the right of life is generally named the right of 'liberty,' and to many persons this seems the primary and most essential right of all." \* The ideal of liberty has made its powerful appeal to men in all ages. In the name of liberty have been performed great acts of heroism as well as despicable acts of crime. Even to-day there are very few ideals which can move men more readily than the ideal of liberty. Liberty is the essential quality of human life. Some writers have tried to make a distinction between the terms 'freedom' and 'liberty'. It is sufficient to say that this is a distinction without difference. The term 'freedom' is of Saxon origin, 'liberty' of Latin origin. In modern usage the two terms are identical in meaning. To use liberty, as some do, in the sense of a mere abstract quality, and freedom in the sense of particular "freedoms," is to do violence to language.

From what we have said in an earlier chapter, it is obvious that there can be no absolute freedom. The only absolute right of any normal human being is the right to the full and free development of his personality. The right of liberty is relative to this end. No man has the right to pursue his inclinations irrespective of consequences.

The term 'freedom' conceals much confusion of thought.

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\*D. G. Ritchie: *Natural Rights*, p. 135.

It does not mean the same thing to the master and the slave, to the subject and the ruler, to the employer and the employee. Free monarchy, as expounded by James I, was the exact antithesis of free government as understood by the parliamentarians of his day.

**Negative and Positive Liberty.**— Freedom in the negative sense means being let alone. It is the mere absence of restraint. It does not say whether such freedom is good or bad. In the words of Ritchie, “We must know who or what is being left alone, on what occasions, in what places, and who it is that is leaving any one alone, before we can profitably discuss the good or evil of freedom.”\* What is wanted is freedom in the positive sense of the term, and positive freedom may be defined as “the opportunity or capacity of doing something.” It is the positive opportunity for self-development or for the continuous expression of one’s personality. “It implies,” says Laski, “the power to expand, the choice by the individual of his own way of life without imposed prohibitions from without.”† It is the condition and guarantee of our becoming the best that we are capable of becoming. It stands for self-determination of action.

## 2. HISTORY OF LIBERTY.

Although we use the word ‘liberty’ in our every-day thought and conversation, seldom it is that we grasp its meaning in all its entirety. It is rich in connotation and suggests new ideas at every turn. In his classic essay on ‘Liberty,’ J. S. Mill gives a brief sketch of the struggle for liberty in its various stages, especially on the political side. In the olden times, he says, liberty meant protection against the tyranny of political rulers. The rulers, however necessary their presence was for the continuance of the body politic, were regarded as holding interests antagonistic to those of the people, and so the aim of

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\* D. G. Ritchie : *Natural Rights*, p. 138.

† H. J. Laski : *Liberty in the Modern State*, p. 11.

patriots was to set limits to the power which the ruler should be allowed to exercise over the community, and the limitation was what they meant by the liberty of the people. Holding this view of liberty, people contented themselves with obtaining recognition of certain immunities and political liberties or rights and the establishing of constitutional checks like the Magna Carta, bills of rights, etc. In the course of time, however, they found that it would be better to have representatives or delegates of people as magistrates of the State, revocable at their pleasure. But this form of liberty also was soon found to be inadequate. So a third step was taken, namely, the identifying of the rulers with the people and making their interest and will coincide with the interest and will of the nation. Thus the power of the State became the power of the nation, concentrated and in a form convenient for exercise. Liberty which meant protection against the oppression of political rulers now came to mean the popularising of government.

When this stage was reached, people thought that they had achieved liberty and that there was nothing more for them to strive after. But they were soon disillusioned. Liberty once again proved to be a mirage, for the notion that people have no need to limit their power over themselves was found to be faulty. People who exercise power not always being people over whom it is exercised, there came to be the anomaly of what is called a "tyranny of the majority"—a tyranny of the prevailing opinion and feeling. And this tyranny was found to be more systematic, more thorough-going, and even more deadly than the tyranny of individual rulers. Thus the idea of liberty received a serious setback, and in its attempt to come again to the forefront, there was born a new form of liberty, *viz.*, individual or personal liberty. Mill gave much attention to this latter form of liberty. His chief aim in writing the essay on "Liberty" was to safeguard the individual, even his eccentricities and

oddities, against the attacks of society. The argument used by Mill in support of this position is that nine out of ten cranks may be mere fools, but for the sake of the tenth man who may be a genius, society ought to tolerate all cranks.

### 3. TYPES OF LIBERTY.

Having briefly dealt with liberty in its political and social aspects, we shall now proceed to a systematic classification of the different senses in which the term 'liberty' is used :—

(1) **Natural Liberty.**—In an earlier chapter we have endeavoured to show how difficult it is to give any intelligent or consistent meaning to the term 'nature.' Therefore, the conception of 'natural liberty' need not detain us long. Some people almost instinctively believe that man is by nature free and that civilisation is responsible for, what they consider to be, his increasing bondage. In support of this position, they quote the opening words of Rousseau's *Social Contract*, "Man is born free; and everywhere he is in chains", although probably Rousseau himself does not mean in the present context what they take him to mean. In his *Discourse on Inequality*, Rousseau gives the impression that man in the state of nature was absolutely free and that the advent of civilisation has meant his enslavement. In the present context, however, all that Rousseau seems to mean is that no man is naturally subject to another and that, therefore, political organisation which implies a certain amount of subjection must rest on some convention or agreement.

Whatever Rousseau's meaning may be, it is clear that natural liberty is not a term with which we can conjure to-day. It is a euphemism for the freedom of the jungle, which is no freedom at all. Rousseau himself, after weighing the arguments for and against the state of nature and the civil state, has no hesitation in deciding in favour of the civil state. **Man in the state of natural liberty is subject to physical impulses and appetites, and his conduct is merely instinctive. But in the civil state he becomes a rational creature governed**

by laws of justice and morality. "What man loses by the social contract is his natural liberty and an unlimited right to everything he tries to get and succeeds in getting ; what he gains is civil liberty and the proprietorship of all he possesses."\* Natural liberty is limited only by the strength of the individual, while civil liberty is limited by the general will. In the state of natural liberty man has merely possession, which is "the effect of force or the right of the first occupier"; but in the civil state he has property "which can be founded ...on a positive title."† All this means that man should bless continually the happy moment which took him from a state of anarchic freedom to a state of ordered freedom. Absolute freedom equals absolute anarchy.

**(2) Personal Liberty.**—Every normal human being desires personal freedom. He wants to be able to plan his life in his own way. He values highly the right to exercise his faculties and to determine the general conditions of his life. He does not relish undue restrictions on his freedom to go about his business the way that he thinks best. Interferences with his particular mode of living, tastes, and pursuits are particularly resented, especially when these personal preferences are not contrary to the social order or public morality. In the U. S. A., prohibition of liquor by State legislation has been keenly opposed by many a law-abiding citizen, because it is construed to be an undue interference with his personal freedom. In England and Germany, every man regards his house as his castle, inviolable against all outsiders. Even the officers of the State cannot force entrance into it, except as provided by ordinary law. In one's own country a person wants to travel about as he pleases and not submit to humiliating restrictions, unless of course he is a criminal or is under suspicion. Slavery is universally condemned to-day, since it

\* J. J. Rousseau : Social Contract, Book. I, Ch. VIII.

† Ibid.

robs human life of all its meaning by reducing man to the position of an animated tool. Even Mill who was an ardent lover of individual freedom, and, together with it, a supporter of freedom of contract, held that no man had a right to contract himself into slavery. Such a man can rightly be "forced to be free", for, in the trenchant language of Rousseau, "To renounce liberty is to renounce being a man, to surrender the rights of humanity and even its duties. Such a renunciation is incompatible with man's nature; to remove all liberty from his will is to remove all morality from his acts."\* "The words *slave* and *right* contradict each other, and are mutually exclusive."

Mill values the right of personal freedom so much that he goes to the extent of saying that the individual should be free to experiment with his life, so long as his actions do not directly and definitely affect others. Mill is even prepared to allow people to experiment in extravagance, viciousness, and drunkenness, subject to consequences.

Like Mill, Bertrand Russell attaches much importance to personal freedom, which he regards as the greatest of all political goods. Thinkers who adopt this point of view value their personal freedom much more than any political rights, for, they say, freedom of thought, freedom of speech and expression, and the like are much more essential to a person's real development than the privilege of voting or holding an office. It is this view of personal liberty which underlies much of the thought of philosophic anarchism.

**(3) National Liberty.**—Although the conception of nationality is comparatively recent in its origin and development, from very remote times men have been prepared to lay down their lives for the safety and security of their group. The love of one's country is deep-seated in man, and patriotism, even in its narrow form, evokes feelings which cannot be

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\* J. J. Rousseau: *Social Contract*, Book. I, Ch. IV.

easily awakened by other ideals. Thus it is that liberty in the sense of national independence has played a very conspicuous part in world history. Wars of independence are still applauded by the bulk of mankind, in spite of the fact that there is a growing revulsion of feeling against war as a means of settling international disputes. So long as we are governed by the conception of sovereign nation-states and so long as internationalism is a little more than a pious hope and a fond desire, freedom from the control of other States is essential to the conception of liberty in its fullest sense.

**(4) Constitutional Liberty.**—Freedom in the twentieth century means not only self-government but also popular government. The term 'National Independence' is beginning to be used more and more as a synonym for democracy or popular government. There is little disposition to substitute for the arbitrary rule of the foreigner an arbitrary rule exercised by one's own countrymen. Thus liberty, in one of its essential forms, stands for a government chosen by, and responsible to, the general body of the people; and this we call 'constitutional liberty.' Burgess, an American writer, places much emphasis on this form of liberty and regards the constitution of his country as the protector of the liberty of the American people. Speaking on this side of things, Laski remarks, "A Bill of Rights, so to say, canonises the safeguards of freedom; and, thereby, it persuades men to worship at the altar who might not otherwise note its existence." \*

**(5) Civil Liberty.**—This may be defined simply as liberty in society. "It includes liberty to free action and immunity from interference."† "It consists of the rights and privileges that the state creates and enforces, such as

- (a) freedom of the person;
- (b) equality before the law;
- (c) security of private property;

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\* H. J. Laski: *Liberty in the Modern State*, pp. 52-53.

† R. G. Gettell: *Introduction to Political Science*, p. 111.

- (d) freedom of opinion and of its expression ; and
- (e) freedom of conscience.

It is, in brief, a safeguard against physical and moral coercion, whether it be from the side of the individual or of the government. It includes personal freedom.

**(6) Political Liberty.**—As contrasted with civil liberty, political liberty stands for the share that the individual has in the management of the State, or, at least in the dictation of the manner in which the powers of the State shall be exercised. As Laski puts it, it stands for the right to be active in the affairs of the State. In particular it implies such rights as the right of franchise and the right to stand for public offices. If political liberty is to be real, says Laski, two conditions are essential:

- (a) education of the people;
- (b) supply of honest and straightforward news.

**(7) Economic Liberty.**—Even after attaining all the types of freedom that we have described above, a person may not be much better off than a slave so long as he has no control over the economic conditions governing his life. In recent years much has been written and more has been said on the virtual slavery of the toiling masses. Almost everywhere in the world where signs of life are manifest, one is painfully conscious of the growing discontent of the labouring classes with the present economic order. What is uppermost in their minds when they contemplate their lot in life is not political nor civil nor constitutional liberty. It is an economic and individual freedom, a freedom which will ensure to the labourer a just reward for his labour. It is a freedom which will destroy all cut-throat competition and blind-alley jobs, and remove such artificial regulations of manufacture and trade as result in the demoralising of the worker. It is a freedom that will help to create that harmonious industrial system where every man will produce only that which he is best capable of producing and the community will have need

for what he produces. And unless and until this freedom is achieved, it cannot be said that we have solved the problem of liberty in its fulness. The freedom which many a working-man enjoys to-day is simply "freedom to starve."

Economic liberty implies, says Tawney, not that all men shall initiate, plan, direct, manage, or administer, but the absence of such economic inequalities as can be used as a means of economic constraint. To Laski, it means security and the opportunity to find reasonable significance in the earning of one's daily bread; it implies democracy in industry.

**(8) Moral Liberty.**—Liberty is not confined to the political and social spheres alone. It invades the realms of philosophy, religion, and theology, and gives rise to the time-old controversy between free will and determinism. In a treatise on political science we are not directly concerned with this form of liberty. Moral freedom, however, cannot be so easily dismissed. A person may have all the kinds of freedom considered above—personal, civil, political, economic, etc. Yet if he does not have moral freedom, he is among the most deplorable of men. A moral slave is one who habitually wills and acts against his universal or rational self. If I see the universal-I in everybody, if I am moved by a supreme disinterested reason, and if I have sincere respect for the personality of every individual, my moral freedom is indeed complete. But if, on the contrary, I continually dwarf my personality by refusing the claims of the universal-I and pay no attention to what Kant calls "the autonomy of the rational will," I am unfree in the most essential part of my nature. Moral freedom is the stone which builders like Machiavelli have rejected, but which has become the head of the corner. Without moral freedom, social and political freedom is of little value.

T. H. Green and B. Bosanquet pay much attention to this type of freedom. They contrast freedom not with coercion, but with irrationality. Moral freedom means to Green an

increasing tendency for the objects of reason and the objects of will to coincide. Free acts are moral acts. Freedom, in the words of Green himself, means the determination of the will by rational objects, "objects which help to satisfy the demand of reason, the effort after self perfection."\* From the standpoint of this writer, it is not mere preference, but the *nature of preference* which constitutes freedom. Everything depends upon the kind of object willed or preferred. Only the good will is free.

B. Bosanquet interprets moral freedom as self-mastery or self-control: it is a condition of the mind. Paraphrasing the thought of Green, he says, "Liberty...is the being ourselves, and the fullest condition of liberty is that in which we are ourselves most completely. . . . 'The free will is the will that wills itself.' . . . We always want what we will, but what we will is not always what would satisfy our want. A will that willed itself would be a will that in willing had before it an object that would satisfy its whole want, and nothing but its want."† To Hegel in particular and to the other idealists in general, freedom interpreted in this manner, is objectively realised in the State; and in being determined by the objects which the well-ordered State places before man, man becomes truly free.

#### 4. LIBERTY AND AUTHORITY.

Our natural impulse is to regard liberty and authority as mutually exclusive of one another. The eighteenth century individualism gave expression to this impulse by regarding every action of the State as an infringement upon individual freedom. This is a profoundly mistaken view. Experience clearly shows that liberty is not a mere absence of restraint, but that authority in some form or other is necessary to the

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\* T. H. Green: *Principles of Political Obligation*, p. 8.

† B. Bosanquet: *The Philosophical Theory of the State*, p. 135.

maintenance of liberty. As Willoughby puts it, freedom exists only because there is restraint. The only liberty possible for civilised man is a defined and limited liberty. To leave each man to do what he pleases means anarchy and the return to the "state of nature." Authority is an eternal principle, and we cannot overthrow it except to our own destruction. The Protestant Reformation set aside the infallibility of the Pope only to substitute for it the infallibility of the Bible. Political authority of one kind or another was destroyed in Italy and Russia only to be replaced by Fascism and Bolshevism respectively. Men free themselves from one kind of authority and put themselves under another.

Far from liberty and authority contradicting one another, they supplement and complement each other. Locke discovered long ago that "where there is no law there is no freedom." Hocking goes so far as to say that the greater the liberty that a person desires, the greater is the authority to which he should submit himself. If a man wants to become a good musician, he must first master the technique of music, and only after that does he become free. If he begins to assert his freedom without due preparation, he will not produce music, but will become a public nuisance. Similarly, the man who wants to be able to communicate his thoughts to others should know some language or other and the rules of grammar governing it. If, in the name of freedom, he violates all rules of grammar and pays no attention to idioms and different meanings of words, instead of communicating his thoughts to others, he will be talking gibberish. Laski is right when he claims that certain restraints upon freedom add to a man's happiness. "They save him from the difficulty of going back to first principles for every step he has to take; they summarise for him the past experience of the community."\*

\* H. J. Laski: *Liberty in the Modern State*, p. 177.

Hocking \* argues that liberty for most of us consists in specialisation and that specialisation means authority. On the whole, there is no liberty without bondage. We must master the conventions before we rebel. Early rebellion is the rebellion of the weakling. There is no liberty without authority. Authority is the bondage of the mind to the superior mind. The child is under the authority of the parents up to a certain stage; and only after that stage is reached does he become free. We never outgrow the authority of some who have to do things for us. The man who is a specialist in his field is our authority. The amount of authority in this world is in proportion to the division of mental labour. Freedom for many of us lies in liberty to concentrate on things that we can do best. One has to buy one's freedom at a price, and that price is submission to authority in those spheres in which one does not aspire to become a specialist. If a person does everything for himself, he does not have much freedom to specialise in his own field. Specialisation, therefore, calls for delegation of freedom. To take a simple illustration, if a man wants to become a good doctor he must devote a considerable amount of his time to the study of medicine. He cannot build his own house, make his own clothes, do his own cooking, and yet hope to become a good doctor. Cooking he leaves to the man who has made that his speciality. To the extent to which the cook carries out the master's will, the master is under the cook's authority, and is at the same time free to pursue his studies. If the cook is a bad cook or incompetent or fails to satisfy the tastes of his master, the master can dismiss him and do his own cooking, but he becomes unfree. The time which he should give to his special field is wasted on things which are not of great consequence to him. Thus, it turns out that liberty and authority, instead of being opposed to one another, are fundamentally correlated to each other.

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\* Abstract of a lecture at Harvard University.

What we have said so far regarding authority in general applies with special force to man's relations to the State. The *raison d'être* of government is that it is a servant to do our will. To the extent to which it carries out our will faithfully, we are free and have positive political liberty. Even when it is imperfect we generally suffer the consequences, rather than overthrow the servant because of the cost it implies.

**Liberty and Law.**—The close relation between liberty and authority in the political field is expressed by the statement that sovereignty, far from being opposed to liberty, is essential to it. Without law there is no true freedom. D. G. Ritchie remarks, "Liberty in the sense of positive opportunity for self-development, is the creation of law, and not something that could exist apart from the action of the state."\* Certain restraints are necessary in the interests of general well-being. But they should be applied impartially, and those who are required to conform to them should be convinced of their reasonableness. Otherwise, liberty and authority will remain opposed to one another. So long as one has the feeling that law is an external compulsion devised for the benefit of some particular person or class or for the satisfying of the whim of some one in authority, there is bound to be profound discontent and unhappiness, leading at times to rebellion. Therefore, if liberty is to be reconciled with authority, the authority we are called upon to obey should be a reasonable authority, and obedience to that authority should be voluntary obedience. To quote the well-known saying of Rousseau, "Obedience to a law which we prescribe to ourselves is liberty." † Likewise Green says that man is free when he obeys the law of which he is the author and obeys it from the impulse for self-perfection. Laski expresses much the same view when he writes, "Law is not merely a command; it is also an appeal." ‡

\* D. G. Ritchie: *Natural Rights*, pp. 139-40.

† J. J. Rousseau: *Social Contract*, p. 19.

‡ H. J. Laski: *Liberty in the Modern State*, p. 71.

**Literal and active consent.**—All this should not lead us to think that a voluntary and literal agreement of all free citizens is essential to every law before it can be rightly enforced. Such a position will lead to the social contract theory, which we have previously endeavoured to refute. The individual does not have an intrinsic right to disobey every law of whose worth he is not personally convinced. To allow him such latitude will result in general anarchy. The principle that we advocate is the principle of active consent as against that of literal consent. The political theory of H. Spencer clearly shows the unworkability of the principle of literal consent, because obviously we cannot get unanimous consent on any matter whatever. Literal consent means the coercion of the minority by the majority, and for such coercion there is no justification from the point of view of any sound political theory. Realising the impracticability of literal consent, some writers base political obedience upon force, and others, like Mill, devise a compromise. Mill advocates liberty in one sphere—the sphere of self-regarding conduct—and compulsion in another—the sphere of other-regarding conduct. None of these principles, it is clear, can really solve the problem of liberty and authority. Political obligation as well as self-government, as pointed out by Bosanquet, is a paradox; it will remain a paradox till we bring to our aid the principle of active consent. Active consent is another name for general will. It does not require a unanimous agreement on any matter at all. All that it demands is the consciousness that the State has a high moral purpose to fulfill and that its will is the will of the individual himself purged and purified of its selfishness. So long as the actions of the State are in the interest of the common good, the disobedient individual can be “forced to be free”, for even when he is being compelled, he is constrained in his own true interest.

## 5. LIBERTY AND EQUALITY.

**It is often supposed that liberty and equality are opposed**

to one another. Such ardent lovers of freedom as De Tocqueville and Lord Acton uphold this point of view. This, it seems to us, is a mistaken view. The French Revolutionists were neither mad nor stupid when they made "liberty, equality, and fraternity" their war-cry, and all the three terms are logically related. If liberty is to move to its appointed end, it is necessary that it should be accompanied by equality in some form or other. As Tawney points out, equality is to be contrasted not with liberty, but only with a particular interpretation of it.\*

In saying that equality is a necessary accompaniment of liberty, we do not mean that society should provide a dead, mechanical level for everybody. Nature has not endowed all men alike. Even among fools there are wide differences. Some fools are bigger fools than others, and no legislation can make them alike. To give to the dunce and the genius the same educational opportunities is not just. Equality does not mean identity of treatment, reward, or functions. It means impartiality or proportionality, *i. e.*, equality among equals and inequality among unequals. It means, in other words, that, other things being equal, my good is of the same intrinsic value as the good of anybody else. If this end is to be attained there should be

- (1) a complete absence of special privileges for any person or group of persons;
- (2) equal protection of law against the abuse of power;
- (3) equal guarantee that power shall be used, not for personal ends, but for the general advantage; and
- (4) provision of adequate opportunities for everybody.

The last-mentioned condition is of such immense importance to modern democratic society that we shall devote some detailed attention to it. As Laski notes, in the modern world, broadly speaking, opportunity is a matter of parental circums-

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\* Cf. R. H. Tawney: *Equality*, p. 239.

tance. There is a tremendous wastage of talent to-day, and, in the ideal society which we contemplate, talent must not be allowed to "perish for want of encouragement."\* Opportunity should be given to everybody to find himself, to realise "the implications of his personality." Inequalities there may be only after a minimum basis of civilisation has been assured to everybody, and these inequalities should be demonstrably rational and altogether in the interest of the common well-being. Nobody, for instance, will question the justice of giving a statesman in office such remuneration as will free him from oppressing material cares and will enable him to devote all his time and energy to the welfare of the State. In other words, differences in remuneration, status, &c., where they exist, should be differences arising out of functions. Laski is right when he says, "Equality involves up to the margin of sufficiency identity of response to primary needs .....[Some should not] starve quietly if others have abundance."† There may be varying rates of payment for efforts. Still, "great inequalities of wealth make impossible the attainment of freedom." †

All this implies that deliberate social restraints should be placed upon individual freedom. No one has a right to indulge without limit his appetite for power or for material gain. A sound conception of liberty necessitates restraints upon it. Already in the political field, we recognise this principle to a considerable extent. Bentham's maxim "each to count for one and no one for more than one" is fairly widely observed in our political relations. The vote of a powerful mill owner or of a landed aristocrat is of the same value as that of the humblest worker or of the poorest peasant. When we pass from the political to the economic field, we find, on the other hand, that inequality is still the order of the day. Experience shows that political equality is valueless

\* H. J. Laski: *A Grammar of Politics*, p. 154.

† *Ibid.* pp. 160-61.

unless it is accompanied by virtual economic equality. Speaking on the evils of present day large scale industry, Justice Brandeis (quoted by Tawney) remarks, "The main objection to the large corporation is that it makes possible—and in many cases makes inevitable—the exercise of individual absolutism." \* The only remedy is to restrict liberty to do whatever one pleases in the name, and for the sake, of equality. In an admirable passage, Prof. Pollard (also quoted by Tawney), puts the truth of the matter in a nutshell: "There is only one solution of the problem of liberty, and it lies in equality ..... Men vary in physical strength; but so far as their social relations go that inequality has been abolished ..... Yet there must have been a period in social evolution when this refusal to permit the strong man to do what he liked with his own physical strength seemed, at least, to the strong, an outrageous interference with personal liberty. ..... There is, in fact, no more reason why a man should be allowed to use his wealth or his brain than his physical strength as he likes ..... The liberty of the weak depends upon the restraint of the strong, that of the poor upon the restraint of the rich, that of the simple-minded upon the restraint of the sharper. Every man should have this liberty and no more, to do unto others as he would that they should do unto him; upon that common foundation rest liberty, equality, and morality." †

## 6. WAYS IN WHICH THE STATE REGULATES LIBERTY.

We have said repeatedly that there is no such thing as unrestricted liberty, for unrestricted liberty for some will lead to denial of liberty for others. From this it follows that in the interest of the individual himself as well as of society, certain restraints on liberty are essential. To an examination

\* R. H. Tawney: Equality, pp. 247-8.

† Ibid, pp. 54 55.

of these restraints as exercised directly by the State, and indirectly by society, we shall now turn. A general principle which can help us in judging the rightness or wrongness of such restraints is the principle that governmental coercion is justifiable if it prevents worse coercion by private individuals.

**(1) The Right of Personal Security.**—Every individual wants his person to be secure against other individuals as well as against the government. This is the most elementary condition of personal liberty. No one has a right to assault me or use my body the way that he likes or to restrain me from moving about the way that I please. I have a right to motion and locomotion so long as I do not interfere with the similar rights of others or seriously disturb the social order. All this is recognised by the modern State. Aggressions, however trifling, are taken account of by the law. A hostile push, *e. g.*, can be construed as an assault. The law protects us against menaces of violence—*e. g.*, the angry shaking of one's fist—as well as against threats of future violence. It likewise recognises the right of self-defence. When a person is reasonably in fear of his life, the law allows him to use as much force as is necessary for his defence, even to the extent of killing his assaulter. The law further protects the individual against other people's negligence.

Aggression on the personal liberty of the individual may come not only from other individuals, but also from the government. All civilised States particularly provide against this latter form of aggression. In England, the right of personal freedom means that no one may be imprisoned, arrested or coerced except in accordance with the ordinary law of the land. This right is safeguarded by (1) redress for wrongful arrest; (2) the Habeas Corpus Acts; and (3) the Rule of Law in general.

(1) "Redress for arrest means that a person who has been wrongly arrested can either have the wrong-doer punished, or exact damages in proportion to his

injuries. Such action may be taken against any person in the realm, official or non official." \*

(2) A Habeas Corpus writ demands that a man who is kept under restraint should be produced before the open court for proper trial. This is a very great check upon the arbitrary action of the executive government. It makes it incumbent upon the police and the executive to act in accordance with the law of the land.

(3) The rule of law, in normal times,

- (a) subjects all persons in the State, including officials, to the ordinary civil courts,
- (b) opposes prerogative or discretionary authority of the government, and
- (c) deduces constitutional liberties such as the liberties of speech, writing, and of public meeting from the ordinary private law relating to private persons.

**(2) Liberty of Thought, Speech, and Writing.**—In a sense, everyone has the liberty of thought, and nobody can restrain it. A person may shut himself up in his room and say or wish to himself anything that he likes. Nobody is affected by it so long as no attempt is made to communicate it to others or to translate it into practice. But this is not the ordinary interpretation of freedom of thought. If liberty of thought is to have any meaning at all, it is necessary that, to some extent at least, it should be accompanied by liberty of speech and action. To think what one pleases and not to be free to express it in speech and action is slavery of the worst type. It "becomes a torture which eats away the soul." †

Freedom of thought and discussion has been valued as a sacred possession of man from very early days. Socrates preferred death to restrictions on his freedom to speak his

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\* R. N. Gilchrist : Principles of Political Science, p. 144.

† D. G. Ritchie : Natural Rights, p. 148.

mind. He took the position that the established order should, to some extent, be threatened by the advocacy of new ideas. In England the case for freedom of thought and discussion has been stated in immortal language by Milton, Sidney, Locke, and J. S. Mill. Milton held that liberty of thought and speech was the very foundation of all other liberties. Mill justified the fullest liberty of thought, speech, and writing in the form of a sorites. He believed that liberty of thought should have for its corollary liberty of speech and that liberty of speech should have for its corollary liberty of writing. His well-known argument is that the received opinion may be altogether true or altogether false or, what is most likely, partly true and partly false; and that, in every one of these cases, there is a very strong reason why we should allow complete freedom of thought and discussion. If the received opinion is altogether true, why should one be afraid of giving others a chance to refute it, if they can? To limit freedom in such a case may mean that one is not sure oneself that the received opinion is after all true. It is certain that to refuse permission to have one's creed openly discussed is to make it a dead dogma. If, in the second place, the received opinion is altogether false, it is our privilege and duty to give up our error for the truth that we can get from others by free discussion. Finally, if the received opinion is partly true and partly false, there is all the more reason why there should be full freedom of thought and discussion in order that each one may learn of the other. To suppress opinion in such cases is to claim infallibility, and experience shows that nobody is infallible.

Mill here applies the doctrine of the survival of the fittest to the realm of ideas. He naively believes that mankind is so reasonable that truth will always meet with warm reception. He prefers social vitality to social peace. As Ivor Brown remarks, a drowsy peace is the antithesis of liberty as conceived by Mill.

This passionate plea of Mill's for the fullest liberty of thought and discussion is open to criticism.

- (a) It does not tally with experience to assume with Mill that if we present different arguments to the people, they will choose the right ones and reject the rest. Mill overlooks the fact that people often decide, not according to reason, but according to emotion.
- (b) Mill rightly argues that his principles do not apply to children and backward races. But he does not take into consideration the fact that, even in civilised communities, there is a goodly number of sub-normal people who are incapable of using liberty aright.
- (c) Mill overestimates the independence of the individual and naively assumes that whatever strengthens the individual necessarily strengthens society. In other words, like the *laissez faire* theorists of his day, Mill assumes that personal good somehow magically transforms itself into the good of society.
- (d) It is a familiar experience that truth should pass through intolerance in order to become strong. If thought and discussion are made as free as Mill desires them to be, and no penalty of any kind is attached to the expression of opinions, what we are likely to get is not toleration which is based on understanding, but toleration which is indifference.
- (e) As a utilitarian, Mill has no right to the extreme view which he holds. He should be guided by considerations of expediency, and not speak of liberty in absolute terms. It is true that he does qualify his statement later in the book, but not to any appreciable extent.
- (f) There is an undeniable difference between freedom of written and freedom of spoken word, and between freedom in one place and freedom in another. But

Mill does not take this into account. All this makes it clear that no society can allow unlimited liberty of thought.

Renan gives a very high place to liberty of thought when he writes, "Liberty is the best weapon against the enemies of liberty. ....Liberty is the great solvent of all fanaticisms." Hocking argues that liberty of thought is essential to the development of the individual, in that it makes it possible to gain power through ideas. Freedom of speech not only corrects public opinion but also gives each man the opportunity to find out how far his ideas are sound. It is through freedom of speech that each man works out his own destiny. Therefore, it is in the interest of society not to suppress it. Growth can come about only through association with others. Freedom of speech conditions and is conditioned by a stimulating intellectual atmosphere. Democracy means government by discussion. In a healthy society all ideas must be given a chance to prove their worth.

It is admitted on all sides that there are limits to the free expression of opinions. These limits are fixed by society through public opinion and by the State through laws relating to libel, slander, defamation, blasphemy, sedition, etc. The general principle followed in restricting freedom of speech is that expression of opinion should be within the limits of decency and should not be contrary to the social order and public morality.

*Libel and Slander.*—Aggressions on the personal liberty of the individual are not merely physical. They may also take the form of causing mental suffering. It is obvious that the law cannot protect us against this form of suffering, for both the proof of the suffering and the measurement of it are alike too indefinite for the law to take into account. Nevertheless, the law does protect one's reputation by providing against libel and slander. It recognises the fact that reputation is a sacred possession of the individual and that it exists

to a large extent in the minds of other individuals. Therefore, when one individual wrongly accuses another of crime, whether it be serious or slight, or in any way causes damage to his character or conduct in a reckless manner, he is punished for slander. In some countries, even to impute that a person is unfit for his occupation or to question his skill is punishable.

Merely to prove that a statement made against a person is true is not enough. The statement must not only be true; the charge should be made clearly in the public interest, for it is just as possible to persecute a person with a true statement as with a false one.

In awarding damages for libel, it is usual to take into account the intention of the attacker as well as the status and feelings of the person attacked. The present law of libel in English-speaking countries is such that at times even when the suggestions made are true and have a definite public import, the person making them is liable to be punished, everything depending upon the interpretation of the law. But the general rule is, whether a damaging statement is made by a newspaper or by a private individual, there is no punishment so long as the offending statement cannot be brought within the scope of the existing law. As Ritchie aptly remarks, "I am free to publish what I choose, but if I libel any one, or if I infringe a copyright, I may have an action raised against me; and if there are on the statute-book laws against treason, or against blasphemy, or against indecency, I may be made responsible before the courts for any offence against such laws."<sup>\*</sup>

*Blasphemy.* The general principles which apply to libel and slander apply also to discussion of religious and moral questions. In England cases coming under the law of blasphemy are tried by the ordinary courts, by a judge and a jury, "so that the particular amount of immorality or reli-

gious danger in an act under judgment will be adjudged largely according to the current ideas of their danger and the public life of the country.” \*

*Attacks on Government and the State.* While in a sense it is true that the State is the creator and guarantor of liberty, it is equally true that liberty always demands a limitation of political authority. To be able to call the rulers to account is one of the essential safeguards of liberty. It is in the nature of authority steadily to extend its own scope. Therefore, as Laski rightly says, resistance to the encroachments of power is essential to freedom. In the words of the same writer, “There will never be liberty in any state where there is an excessive concentration of power at the centre.” † “Order, surely, is not the supreme good, and rebellion has not always been wrong.” ‡

The above statements are commonly accepted by modern statesmen and, except in countries which are tyrannically or autocratically governed, the citizen has wide powers of criticizing the government of the day. In normal times he has the right of calling into question the soundness of governmental schemes and measures, of pointing out errors made by the government, of presenting his own opinions on matters of State, and of suggesting legal methods for remedying existing wrongs. But he is not allowed to disturb the stability of the State by inciting people to break the laws of the State or by defying its authority in any other way. No State can afford to tolerate law-breaking, although it may not be expedient to punish every offender who preaches disloyalty, for it may be generally assumed that the ordinary individual in an enlightened State has enough sense to discern foolishness when he hears it. Loyalty cannot be compelled or inherited. The only loyalty worth having is spontaneous loyalty arising

\* R. N. Gilchrist: *Principles of Political Science*, p. 150.

† H. J. Laski : *Liberty in the Modern State*, p. 65.

‡ *Ibid.* p. 76.

out of the reasonableness of the policies and measures of the State.

Acts of violence and disloyalty come under the laws of sedition and treason. Dicey quoted by Gilchrist says, "Every person commits a ~~misdemeanour~~ who publishes (verbally or otherwise) any words or any document with a seditious intention." \* The same writer defines seditious intention as "an intention to bring into hatred or contempt or to excite disaffection against the King or the government and constitution of the United Kingdom as by law established, or either House of Parliament, or the administration of justice, or to excite British subjects to attempt otherwise than by lawful means the alteration of any matter in Church or State by law established, or to promote feelings of ill will and hostility between different classes."

In judging acts which are regarded as inciting to crime and lawlessness, it is necessary to consider their directness and definiteness. Only acts which can be fairly construed to cause a genuine, imminent danger to public safety should be punished. When the danger is indirect and remote, statesmanship requires toleration. If this limitation is not insisted upon, individual liberty is bound to be curtailed more and more by executive action. Laski goes so far as to say that all restrictions upon freedom of expression upon the ground that they are seditious or blasphemous are contrary to the well-being of society, for the heresies of to-day are the orthodoxies of tomorrow. Terror does not alter opinion. Considerable freedom of expression is essential to progress, which ought to be an accompaniment of order. Whether a given utterance or written word is likely to lead to public disorder or not, should be decided in the ordinary court by a judge and jury. To allow such cases to be decided by some branch of the executive is sure to lead to abuse. In the forcible language of Laski, "Executive justice, in fact, is simply a euphemism for the denial of justice."†

\* R. N. Gilchrist : *Principles of Political Science*, pp. 149-50.

† H. J. Laski : *Liberty in the Modern State*, p. 111.

It is difficult to say whether freedom of speech and expression should be the same in times of crisis as in normal times. The general consensus of opinion is that exceptional times such as times of war justify serious curtailment of freedom and that anything which hinders the winning of the war can be rightly punished. Laski takes a different point of view. He believes that freedom of speech in war time broadly involves the same rights as freedom of speech in times of peace. In his own words, "If a man sincerely thinks, like James Russell Lowell, that war is merely an alias for murder, it is his duty to say so even if his pronouncement is inconvenient to the government of the day" \*—"A wartime government is always obtuse to suggestion, angry when inquiry is suggested, careless of truth." †

*Liberty of Press in England and France.*—The laws relating to the press in these two countries represent two different types altogether. In England "the liberty of the press consists in printing without any previous license, subject to the consequences of law" (Lord Mansfield). There is no censorship, except in the case of plays and cinema pictures. No caution money or deposit is required before publication. "Press offences are tried in the ordinary courts by a judge and jury. With the jury, as in all cases of libel, lies the decision as to whether the press exceeds the law or not." ‡ Newspapers are under no more special liabilities than private individuals.

In France and the continental countries in general, however, there are not only special press laws, but also special tribunals for trying press offences. The French theory of government is that government should not only punish those guilty of exceeding the limits of freedom of speech, but also guide public opinion in the proper channels. It is based upon the principle that prevention is better than cure.

\* H. J. Laski : *Liberty in the Modern State*, p. 113.

† *Ibid* p. 115.

‡ R. N. Gilchrist : *Principles of Political Science*, p. 151.

Which of the two systems—the English or continental—is superior, is a debatable question. There is a general presumption against censorship, licensing, deposits, and securities. Censors are among the least tolerant of people, and the responsibility placed on them is a great and difficult one. The censor is supposed to judge what is good for a great mass of human beings as well as for the future. In his immortal *Areopagitica*, Milton says, “ who kills a man kills a reasonable creature, God’s image; but he who destroys a good book kills reason itself, kills the image of God, as it were in the eye..... . It cannot be denied but that he who is made judge to sit upon the birth or death of books, whether they may be wafted into this world or not, had need to be a man above the common measure, both studious, learned, and judicious.”

It is interesting to note that it was not on these general grounds that censorship of the press was abolished in England, but due to the practical inconvenience of enforcing it. In favour of the French system which gives fairly wide powers to the government, it is argued that, in the interest of public safety, restrictions should be placed on a free discussion of political, social, and moral subjects and that it is illogical to place newspapers under no more special liabilities than private individuals.

No such right as the liberty of the press has ever been recognised by law in England. Even though there is no censorship of the press, there are laws relating to sedition, treason, blasphemy, and the like, and these laws circumscribe the liberty of the press. Under these limitations it is generally assumed that freedom of discussion is ensured by jury trial. However true this assumption may be with relation to the past, it does not have the same validity at present owing to changed conditions. In earlier days the class from which jurymen were drawn had a tendency to give verdicts against the government. But to-day the majority of jurymen are

not particularly noted for love of freedom of thought or discussion. Hence it may be that the system which was once a guarantor of individual liberty may have to be abandoned unless it can be radically transformed.

**(3) Liberty of Action**—(Individual and Collective).

**INDIVIDUAL.** Mill's essay on *Liberty* is an eloquent plea not only for liberty of thought and expression but also for liberty of action. He divides conduct into self-regarding conduct and other-regarding conduct. Self-regarding conduct is, according to him, conduct which concerns the individual and the individual alone, while other-regarding conduct is conduct which affects others, besides oneself. In the former sphere, Mill argues, there should be no interference of any kind. It is purely a matter of individual preference. In the latter sphere, however, the State may interfere by means of laws and society by means of public opinion, although there are cases in which it is not expedient for either to interfere. In other words, Mill argues for absolute liberty in one sphere and limited authority in the other. The only ground on which interference can be justified is the self-protection of society.

This division of conduct is open to serious criticism.

(a) No weapon has been forged which is sharp enough to divide conduct into the self regarding and other-regarding spheres. If there is any truth at all in the organic theory of society, it is that individual good and social good are interdependent. Even acts which appear to be altogether personal in their bearing sooner or later touch society at large.

(b) According to Mill, extravagance, drunkenness, gambling, etc. are self-regarding acts, so long as they do not lead to the non-payment of debts, neglect of one's work, or laxity in the performance of one's duties to one's family. However sound such a distinction may be in theory, in practice it is bound to break down in most cases. Even if

the distinction were true in some cases, we may well ask the question, has not the State or society a responsibility towards the individual for his own good or improvement? Are we justified in abandoning the individual to his own vicious course? We cannot agree with Mill in presuming that every individual knows his interests best. It may be that the individual is the best judge of his present pleasure, but he is not necessarily the best judge of his future pleasure or of the means to such pleasure.

Notwithstanding these obvious defects, it must be said that Mill's distinction has a tremendous practical value as a rough and ready rule of action. Mill is right in assuming that mere majority opinion does not make anything right. As far as possible, society should regulate only such conduct as directly and definitely concerns others; but this is not an absolute law. In these days of unlimited bureaucracy and blind worship of the State, Mill's theory needs to be restated with all the force that it contains.

Mill's contemporary, Herbert Spencer, states his theory of liberty of action in the form of a law, according to which, "Every man is free to do that which he wills provided he infringes not the equal freedom of any other man."\* It is needless to say that this law is incapable of application to any large extent. What, for instance, in modern society is the meaning of equal freedom of all to land, the primary commodity out of which all wealth has come? Or, is A justified in assaulting B, provided he does not interfere with the latter's freedom to pay back the compliment to A or to assault C, D, and E?

#### LIBERTY OF COLLECTIVE ACTION.

(a) *The right of public meeting.*—This is part of the right

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\* H. Spencer: *Justice*, p. 46.

of free speech. The French Declaration of Rights of 1793 mentions "the right of assembling peaceably" along with the right of free expression of opinion. In Belgium there is no interference with meetings in private houses, but meetings in the open air come under the police law. The nineteenth article of the Belgian Constitution declares: "The Belgians have the right of assembling peaceably and without arms, on condition of conforming to the laws which may regulate the exercise of this right, but without having to obtain previous permission. This rule does not apply to meetings in the open air, which remain entirely subjected to the police laws."

The English law recognises no such distinction between meetings indoors and meetings outdoors and there is no law at all recognising the right of public meeting. The rights of public meetings are derived altogether from the rights of private individuals to go where they please and say what they like, subject to the laws of the land. The argument is that if one individual has the liberty to walk along the street and say what he likes, all others can do the same. There may be laws against public nuisance and other general laws, and so long as these laws are not broken, the rights of public meeting are the same as those of the private individual. As Dicey puts it, "No better instance can indeed be found of the way in which in England the constitution is built up upon individual rights than our rules as to public assemblies. The right of assembling is nothing more than the result of the view taken by the courts as to individual liberty of person and individual liberty of speech. There is no special law allowing A, B and C to meet together either in the open air or elsewhere for a lawful purpose, but the right of A to go where he pleases so that he does not commit a trespass, and to say what he likes to B, so that his talk is not libellous or seditious,

the right of B to do the like, and the existence of the same rights of C, D, E and F, and so on *ad infinitum*, leads to the consequence that A, B, C, D, and a thousand or ten thousand other persons may (as a general rule) meet together in any place where otherwise they each have a right to be for a lawful purpose and in a lawful manner."

This view of regarding a multitude as simply a collection of individuals leads to the belief that there is a sort of unlimited right of taking out processions and holding meetings. Although, as a general rule, the organisers of processions give previous notice to the police and consult them about the route they should take, they are not legally responsible for the orderliness of the processions (or meetings). It may be an advantage to incorporate into the English system the continental practice of recognising the public (and often political) aspect of meetings and processions by means of special laws. At the same time, much can be said in favour of the existing system. It provides a safety valve for the pent-up feelings of people and a ready platform for the grievances and aspirations of minorities and saves the police the odium of favouring one set of opinions as against another. It is generally wise to allow the expression of any kind of opinion so long as there are no incitements to violence and so long as a certain decency of language is observed in expressing one's views. Besides, as Ritchie rightly says, "it is...a useful part of a citizen's education to be able to hear the most divergent opinions propounded without a breaking of heads, either by the mutual efforts of the audience or by the guardians of the public peace." \*

(b) *The right of association.*—In the modern State there are associations of various kinds—political, commercial, philosophic, educational, etc. with varying objects, such as the remedy of grievances or distressing circumstances, propaganda, exploitation

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\*D. G. Ritchie: *Natural Rights*, p. 214.

of non-members, fellowship of the like minded, mutual help, etc. Some of these associations are temporary, and some permanent. Some are confined to local areas, and some are international in their scope. None of them can legitimately use force against their own members or outsiders. For the most part, the weapon which they have at their disposal is "moral persuasion." If penalties are to be inflicted at all, it is only by using the legal machinery provided by the State for the purpose.

Like individuals, associations have their rights and duties. No association has a right to wage war against the State or secretly endeavour to overthrow it. Whatever local autonomy associations may possess, the final authority rests with the State. Associations which extend beyond the frontiers of any one State and which command the ready loyalty of its members may, in course of time, lead to the undoing of the modern nation-State and to the foundation of an international State. Whatever the future may have in store, it is clear that the modern State should safeguard the liberty of the individual against the ever-increasing authority of associations and should prevent the associations from coming into conflict with one another. As far as a powerful organisation like the Trade Union is concerned, it is the business of the State to be impartial as between Unionists and non-Unionists.

In interfering with the liberty of associations, the general rule to follow is "all associations which prevent free moral development in a people are wrong, but their moral badness becomes a matter of state only when they endanger the state or openly contravene the end for which the state exists."\*

(c) *The right to boycott, picket, and strike.*—Most modern States allow the practice of boycotting within limits. The object of the boycott is to induce a person (or persons) to act contrary to his inclinations or to

\* B. N. Gilchrist: *Principles of Political Science*, p. 154.

what he considers to be his interests. It may be undertaken for social, economic or political reasons. It is primarily an offshoot of the modern industrial civilisation. When boycott is resorted to by an individual or individuals it is not a serious matter. But when undertaken by an association on a large scale, it calls for social regulation. There is generally no objection when a group of workers engaged by a mill or factory refuse to purchase its products until their terms are met. But when they persuade workers in another factory to adopt the same course of action in sympathy with them or to refuse to work for employers who buy these products, the matter calls for State action. One chief reason why the State does not ordinarily interfere in these cases is the inconvenience involved in "imposing severe and dangerous restraints on the freedom of industrial intercourse."\* Another reason is the realisation of the fact that combination is the only effective means by which the labouring masses can place themselves on a par with the rich in bargaining.

Similar arguments apply to the practice of picketing as well. There is no objection to peaceful picketing. But when a large group of workers follow from place to place an individual worker who has not gone on a strike, it is doubtful whether there is peaceful persuasion. Peaceful picketing can easily shade off into disorderly picketing, and any well-constituted State will try to draw as careful a distinction as possible between the two. Persuasion is justifiable, but not molestation.

*Strike*.—The right to strike has been recognised only in recent times. In many countries trade unions were illegal

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‡H. Sidgwick: *Elements of Politics*, p. 579.

associations for a very long time, but to-day their right to exist is generally admitted. Everybody recognises that in most industrial disputes when all other means of settling the issue have failed, the only effective weapon left is the right to strike. But when we pass from a strike in a single industry to sympathetic strikes or a general strike, grave doubt arises. When, for instance, the railwaymen are on a strike, have the coalminers the right to declare a sympathetic strike? Or, have the railwaymen a right to persuade all the principal trade unions of the country to go on strike? The general consensus of opinion is in favour of limiting the right to strike to a single industry. Laski, on the other hand, upholds the right to a general strike. He believes that the general strike is, in extreme cases, the only way of rousing the inert public to its responsibility towards the labouring masses. "A government," he says, "which meets the threat of a general strike is not entitled to public support merely because it meets the threat." \*

Another controversial question which arises in this connection is the right to strike of those engaged in public services like civil servants, policemen, postmen, railwaymen, and coalminers. It may be argued that if, e. g., the perfume makers go on strike, the community can get on without their services. But if railwaymen or policemen go on strike it will mean a serious dislocation of the life of the community. It is, therefore, widely maintained that public services have no right to strike under any circumstances. Here again Laski holds a different point of view. To quote his own words, "The civil servant is not merely an employee of government; he is also a citizen." † The community is not entitled, on any terms, to put its convenience first, and the workers' freedom afterwards." In order to diminish the number of strikes, Laski proposes

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\* H. J. Laski : *Liberty in the Modern State*, p. 133.

† *Ibid.* 138.

- (a) that basic wages and basic hours of labour should be determined on a national scale,
- (b) that the conditions of each vocation should be made materially and spiritually adequate, and
- (c) that a large amount of self-government should be conferred upon each vocation.

**(4) Liberty of Religious Opinion and Practice.**— This is essentially a modern right. It has come into being only after considerable struggle and sacrifice for the sake of conscience. Many of the ancient States were tribal States. In them the boundaries of nationality and religion coincided. Such States today are exceptions rather than the general rule. Many of our present-day religions are world faiths which seek to win the whole of mankind to themselves. Hence there arises the greatest need for tolerance. We agree with Rousseau when he says "tolerance should be given to all religions that tolerate others, so long as their dogmas contain nothing contrary to the duties of citizenship." \*

There has been a very close relation between the Church and State in most countries. Countries which were theocratically governed made no distinction between the Church and State, for the two institutions were practically identical. In medieval Europe there was a bitter struggle between the Church and the State for ultimate authority, resulting in victory to neither side. The Protestant Reformation once again made religion a live issue and Western Europe witnessed long periods of persecution and repression for the purpose of maintaining true doctrine. The present relation is generally one of friendly recognition not only between the Church and the State, but also between different religions and sects in the same State.

Departures from the recognised teachings of the Church are regarded as heresies, and the only punishment for them is ecclesiastical. The State does not concern itself with them.

† J. J. Rousseau: *Social Contract*, Book. IV, ch. VIII.

When, however, deliberate attempts are made to bring any religion or sect into contempt, endangering public order, the law of blasphemy comes into operation. The Church, being a voluntary organisation, is subject to many of the limitations to which other voluntary organisations must submit. It cannot wage war, levy taxes, or imprison individuals. It has no right to incite people to revolution or civil war or inculcate immoral practices. It has no right, in other words, to act contrary to the duties of citizenship.

At the same time, on account of its special position the Church enjoys certain privileges denied to other voluntary organisations. It meets a great social need and inculcates morality of a high order. At its best, it cultivates "a spirit and capacity for idealism which the State's work needs but cannot give." \* Such being the useful rôle played by the Church, it is desirable that it should receive from the State a reasonable amount of protection and encouragement. In most countries special protection is given to religious meetings from disturbances due to loud music and noisy processions, and annoyance caused by sellers of refreshments, hawkers, etc. The State allows ministers of religion to perform marriages under its supervision. In some countries it exempts them from certain civic duties like serving on a jury and participating in wars. In many places buildings used for religious worship are made immune from taxation. Some churches or religious denominations are recognised as established churches and are wholly or largely supported by State money. This is a questionable practice as it leads to the smothering of the Church. A religious organisation is worth nothing if it is not free to speak its mind without fear or favour.

*The Right of Conscience.*—While the right to profess and practise any religious belief within limits of decency and public order is widely recognised, the right of conscience has

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\* A. D. Lindsay in a public address.

not yet won such recognition. The difficulties in the way are evident. Conscience is the inner unspoken voice, and no one knows what it says except perhaps its possessor. If each one were allowed to follow his own conscience, there would be a disruption of the social order. Some consciences may be diseased or perverted, some may be merely expressions of the whims and fancies of their possessors, and some may be nothing more than a reflection of people's early training and education. All consciences do not speak alike. Hence, in political matters, there arises the need for a collective body like the State representing the intelligences of the community at large to lay down what is likely to be to the common interest, and what is not. The individual can decide for himself in the light of his conscience what is good and what is bad ; and with such freedom no power on earth can interfere. But the State can, and must, interfere with outward actions inasmuch as they affect the safety and welfare of the people at large.

Most modern States allow conscientious objectors to war to refrain from fighting. This they do on grounds of expediency, and not on the general ground of allowing each citizen freedom to pursue the dictates of his conscience, wherever his conscience may lead him.

**(5) The "Right" to resist the State.**—This "right" closely follows the right of conscience. The best treatment of this difficult subject is found in T. H. Green's *Principles of Political Obligation*, Sect. II, and we shall briefly sum up the discussion contained therein. The individual must indeed judge for himself whether a given law is for the common good or not. Even if he judge it not to be, he ought as a general rule to obey it, especially in a country where there is a popular government, and where there are legal or constitutional ways of bringing about the desired change without much difficulty. Till bad laws are repealed, the individual should conform to them, for that is his social duty. But where there is no legal way of getting bad laws repealed, or where

the government of the day is so corrupt that it deliberately prefers private interest to public good, or where it invades the sphere of personality, it may be the duty of the individual to resist. Even in such extreme cases, resistance is not a right, but a painful duty.

Before launching upon resistance, the good citizen, especially if he be a leader, should place before himself the following considerations :

- (a) Have I exhausted all constitutional methods of bringing about the desired change ?
- (b) Are the people whom I call upon to resist keenly conscious of a flagrant wrong, or am I simply exciting their passions ? Is the wrong done by government of such a serious nature as to demand resistance ? Do the mass of the people appreciate the grounds on which resistance is to be made ?
- (c) What about the character and temper of the people with whom I have to deal ? Are they emotional and easily excitable, or are they reasonable and self-possessed persons who know where to stop ?
- (d) What about my own character ? Have I divested myself of all egotism, and am I actuated by an unselfish desire for human good ?
- (e) What about the consequences ? Is the second stage likely to be worse than the first ? Will law-breaking lead to a condition of general anarchy ?

Green realises that times of revolution are not the times when questions like these are likely to be impartially considered. Times of revolution are times for action. Besides, in many cases, whether a certain line of action is for the common interest or not, only the sequel can tell. Further, repeated attempts and repeated failures may be necessary before a good cause succeeds. A majority has no right to resist simply because it is a majority. It may often be the

duty of a helpless minority to resist, even when there are no chances of success.

The practical conclusion to which Green is led as a result of these considerations is that whichever side the individual may decide to take, he is sure to do more good than harm provided his character is sound and his motives are pure and undefiled. On the whole, the best character is likely to produce the best results, notwithstanding various appearances to the contrary.

**(6) The Right of the State to punish.**—Redress of grievances in early times rested with the aggrieved individual or the clan to which he belonged. But to-day it is universally recognised that it is the duty of the State to punish offenders, although it may not be expedient for the State to punish every offender. Outwardly, punishment is a limitation of the liberty of the individual. Hence it is that we deal with the general theme of punishment in discussing the question of liberty.

It has been said repeatedly that the right of the individual to free life depends upon his capacity for membership in society. A criminal displays an anti-social will and, therefore, society is justified in interfering with his right to free life. In the interests of society, it is necessary that the criminal tendencies in every one of its members should be curbed. To neglect this will lead society back to primitive chaos and anarchy.

On its theoretical side, punishment has been justified from various points of view. Theories of punishment can be grouped under three heads :

- (1) The retributive theory ;
- (2) The preventive or deterrent theory ;
- (3) The reformatory theory.

The first of these theories has an unfortunate name. It suggests the idea of retaliation or revenge, although it is true that historically this idea is the oldest conception of punish-

ment. Among the ancient Israelites, the recognised practice was "an eye for an eye, a tooth for a tooth." When used by modern writers like Hegel, Green, and Bosanquet, retribution does not mean public vengeance or vindictiveness. While the feeling of vengeance can be understood in relation to the individual or even in relation to nations, it is inexplicable when applied to the relation between the individual and the State. Green begins his treatment of punishment by disclaiming the association of punishment with the idea of revenge. Mill and Leslie Stephen, however, keep up this association. Stephen speaks of punishment as licensed revenge. Green rebuts this point of view when he argues that it is the essence of punishment to substitute and supersede private vengeance. Private vengeance is the exact opposite of recognised punishment. In a state of society where private vengeance is the universal practice, there can be no right at all. Punishment, on the other hand, is an expression of the fact that the criminal has violated a right or rights recognised by society.

Understood in this sense, punishment is the natural consequence of an anti-social act. The hostile will of the individual stands up and defies a system of rights which the State exists to maintain and which society recognises as being essential to the exercise of capacities for good. Hence the criminal has a "right" to be punished. Not to punish him is to treat him as less than a responsible being. Punishment is a right of which he should not be defrauded. A man cannot put his finger into the fire and expect that it will not be burned. Similarly, he cannot deliberately disturb the social order of which he is a part and expect that society will not take any action against him. Punishment is an effective means of bringing the criminal to his senses. It may shock him into a better life. As Bosanquet notes, "When one stumbles and hurts his foot, he may look up and see that he is off the path. If a man is told that the way he works his factory or keeps his tenement houses is rendering him liable to fine or

imprisonment, then, if he is an ordinary, careless, but respectable citizen, he will feel something of a shock, and recognise that he was getting too neglectful of the rights of others, and that, in being pulled up, he is brought back to himself. His citizen honour will be touched. He will not like to be below the average which the common conscience had embodied in law." \*

Punishment is thus the realisation of one's own will. It is the criminal's own will, "implied in the maintenance of a system to which he is a party, returning upon himself in the form of pain." It is the correction of one's recalcitrant or rebellious will by one's "real" will.

The chief merit of this theory is that it fastens attention upon the criminal himself. The deterrent theory, on the other hand, directs punishment against other possible criminals, and this is an inversion of the relation of things. The theory under consideration regards punishment as a measure of social hygiene. Punishment is "a display of the power of society in the service of social self-preservation." † Punishment should be just. It should be deserved.

The chief defect of the theory is that it can give no reasonable account of forgiveness. As Rashdall ‡ points out, resentment and forgiveness are alike applications of the general duty of promoting social welfare, and social considerations determine the measure of both. A further defect which one may detect in this theory, as well as in the deterrent theory, is that it emphasises social prevention to the practical exclusion of self-prevention; and punishment, in order to be effective, should include both forms of prevention.

The two natural perversions of the retributive theory, as brought out by Bosanquet, are

\* B. Bosanquet: *op. cit.*, p. 210.

† Oppenheimer: *The Rationale of Punishment*.

‡ H. Rashdall: *The Theory of Good and Evil*, Vol. I, Ch. IX.

(1) the confusion of punishment with personal vengeance and

(2) the claim that punishment should be equivalent to offence.

The first of these perversions we have discussed already. Punishment is not the same as retaliation or vindictiveness. Even public indignation against despicable wrong-doing cannot be interpreted in terms of personal vengeance. The State operates through a system of settled, impartial, and general laws in order to maintain rights. Law is general in its application, while indignation is particular. Therefore, we contend that punishment is not vindictive. Public indignation does not spring from a desire for vengeance, but is an expression of the demand that the criminal should have his due.

As regards the second perversion, it must be noted that there is no way by which the State can measure either the pain of punishment or the moral guilt of the crime. Punishment cannot be adapted to factors which cannot be ascertained. As Green notes, even if the State could work out a proportion between the pain of punishment and the moral depravity of the crime, it would mean that the State would have to punish every case differently. That would mean "an end to all general rules of punishment." \*

(2) *The Deterrent Theory.*—This theory is expounded at great length by Green and Bosanquet. While they recognise the fact that a sound view of punishment should include all these elements—retribution, deterrence, and reformation—they tend to stress the second element more than the other two. According to the deterrent theory, the primary aim of punishment is to prevent other possible criminals from committing the crime which is punished. In the words of Green, the object which the State has in punishing "is not to cause pain

\* T. H. Green: *Lectures on the Principles of Political Obligation*, p. 191.

to the criminal for the sake of causing it, nor chiefly for the sake of preventing him, individually, but to associate terror with the contemplation of the crime in the minds of others who might be tempted to commit it." \* The purpose of punishment, in other words, is to provide society with an object lesson. This view of punishment has prevailed for a very long time, although it is waning to day. J. Bentham advocated public punishment for the sake of its effect upon spectators. In replying to a horse thief who was remonstrating with an English judge for sentencing him to the death penalty, the judge is said to have remarked "Man, thou art not to be hanged for stealing a horse, but that horses may not be stolen." This view of deterrence was responsible for public executions which were common till recent times. Even to-day deterrent sentences are frequently passed by judges when they believe that the circumstances of the case demand them. Sometimes such sentences are passed in a particular district or in certain parts of a city where a particular crime abounds. All this does not mean, however, that deterrence is the chief aim of punishment. No doubt punishment has the effect of warning prospective criminals against the act which is punished. But that is only a secondary consequence.

Our chief concern in punishing is to protect society against its anti-social members and, if possible, protect them against themselves

We are unable to agree with Green when he claims that the primary aim of punishment is the future prevention of crime by associating terror with it in the popular imagination. If we accept this view, it will mean that the seriousness of a crime is to be measured not by the amount of suffering it causes to society, but by the amount of terror which needs to be associated with it in order to bring about its prevention. It will mean, for instance, that if offences against property become

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\* *Ibid* p. 192.

more common than offences against life, the former class of offences will have to be dealt with more severely than the latter, which is clearly absurd. Thus, on Green's theory, greater the crime heavier the punishment is only a tautology. It means that the crime which needs most terror associated with it should have most terror.

Green takes into account extenuating circumstances. He argues that a man who kills another in a quarrel which arises because the latter has tampered with the fidelity of the former's wife is a case different in kind from a cold-blooded murder and that in such a case there is no need for associating **extremest** terror (i.e. hanging) with the crime in order to secure the general protection of human life. This argument, it seems to us, is guilty of twisting things around in order to fit them into a preconceived theory. The natural explanation is that a man under provocation is not as bad as a man who does wrong deliberately. Green's argument is that a man who commits a deliberate murder should be dealt with by a greater punishment in order to deter it. The ordinary man would say that a deliberate murderer is a worse enemy of society and that, therefore, we must punish him as such. We measure the gravity of the crime by the gravity of the right violated. There is no reason why Green should assume that there would be other criminals similar to the one punished. Deterrence should therefore come in as a secondary qualification and not occupy a pre-eminent place.

A practical reason why deterrence should be regarded as a secondary element is to prevent the judge from inclining to undue severity, a probable tendency, if he is to use the punishment of one to serve as an example to the many. Exemplary sentences have no doubt a place in punishment, but to build the whole theory of punishment on what is exceptional seems unjust. Even the criminal should be treated as an end in himself and not as a mere means to an end.

(3) *The Reformatory Theory.*—This theory has been

very prominent in recent discussions. According to it, the primary purpose of punishment is to restore the individual to society by bringing about lasting reforms in his character, so that he will become a self-respecting and independent member of society. Some of the advocates of this theory go to an extreme when they regard the criminal as a patient to be cured rather than as an anti-social individual to be punished. The followers of Lombroso claim that crime is "a pathological phenomenon, a form of insanity, an inherited or acquired degeneracy." A criminal, they say, is born, and not made or, at least, he is *more* born than made. According to this view, "prisons must be superseded by hospitals, asylums, and reformatories" Other advocates of this theory blame social conditions for the existence of crime and argue that crime would vanish almost completely if we could have more just social conditions. They say that society is so firmly established to-day that there is no justification for an attitude of vindictiveness towards the criminal; society can afford to be generous with him. To the extent to which the reformation theory is a reaction against the unrelenting and unseasonable spirit of vengeance of an earlier age, it is a sound theory. But, at the same time, it is subject to certain serious limitations.

- (1) Not all criminals are insane or feeble-minded. We distinguish cases of mental insanity from cases of crime proper. A criminally insane person is confined or restrained and is managed by others, but not a normal person. He is punished because he is a responsible person, accountable to society for his actions. We excuse a kleptomaniac, but do not excuse the ordinary thief. Therefore, to regard all crime as a pathological phenomenon is wide of the mark. If criminals are all irresponsible persons, they are incapable of guilt and are in the strict sense innocent.

(2) There is no doubt that for certain classes of crimes, society is more responsible than the criminal concerned, *e. g.*, a starving man who steals a loaf of bread in order to satisfy his hunger. But such crimes are abnormal crimes, and we are not justified in basing a theory on exceptions. Most crimes arise out of an undisciplined will.

(3) Reformation is certainly an important element in any adequate view of punishment, but it is not the only element. A proper view of punishment should include all the three elements—‘retribution’, deterrence or prevention, and reformation. If reformation were the only end, there would be little or no justification for the infliction of pain upon the criminal, as there is no logical connection between pain and reformation. “If pleasures would cure the offender, ought he to be given pleasures?” We agree with Bosanquet when he says that punishment must be deterrent for others as well as reformatory for the offender, and, therefore, in some degree painful. To place all emphasis upon reformation is to disregard the interest of society. Furthermore, if the reformation theory were the only sound theory of punishment, there would be no justification for the indefinite imprisonment of those criminals who have proved to be altogether incorrigible, for punishment in their case is useless.

(4) The most serious criticism is that the theory tends to misinterpret the nature of moral development. No moral regeneration is possible so long as the offending person is not a party to such reformatory process. All true reform comes from within. The ordinary criminal does not want to be treated as a patient. He is an agent and insists that his personality be respected just as much as the per-

sonality of any law-abiding citizen. From this point of view, therefore, as Bosanquet remarks, applied to responsible human beings, the reformation theory is an insult. Moral injunctions, religious appeal, vocational training, and the like can bring about the reformation of the criminal, provided he is convinced that he has deliberately violated the rights of society and that the punishment meted out to him is a just punishment. Green is right when he claims that the justice of punishment depends

- (1) on whether the social organisation in which a criminal has lived and acted is one that has given him a fair chance of not being a criminal or, in other words, on the justice of the general system of rights;
- (2) on the understanding by the criminal what rights mean;
- (3) on his recognition that he has violated some understood right of society. So long as these conditions remain unfulfilled, no incentive from without can accomplish the regeneration of the criminal. It is a regrettable fact that the reformation theory in practice has hitherto been largely a failure. The number of criminals who have been transformed by prison life is infinitesimal.

James Seth uses the term 'discipline' to describe the view of punishment which we have adopted, a view which combines into an indissoluble unity the best elements of retribution, deterrence, and reformation. Punishment must be firstly preventive of injustice. It should have no trace of vengeance or vindictiveness. Our goal in punishing should be "to bring home to a man such a sense of guilt as shall

work in him a deep repentance for the evil past, and a new obedience for the time to come.”\*

**(7) The right of the State in regard to the Family —**  
Family rights may be considered under the right to liberty or the right to property according to the way in which we interpret the terms ‘liberty’ and ‘property.’ These rights are also called household rights. They include the relations

- (i) of the husband to the wife,
- (ii) of the parents to the children, and
- (iii) of the master to his servant.

All rights are personal in that they have for their basis the idea of personality. But the rights of family are personal in a double sense, for both the ‘subject’ and ‘object’ of these rights are persons. Thus the husband has rights over his wife as against the rest of the world, and conversely the wife has rights with respect to her husband. In the words of Green, “the right of a husband in relation to his wife not merely implies that all those as against whom he claims the right have a like claim against him, but that the wife over whom he asserts the right has a right, though not a precisely like right over him.”† Family rights are, therefore, reciprocal; they imply a mutual respect for personality. This truth has not been recognised at all times. Even to-day, in many countries, the law favours the man more than the woman.

The family is the basis of our social structure to-day, whatever may happen to it in the future. The indications, however, are that it will continue to exist because of the vital part it plays in an ordered social existence. It is necessary for the good life of the individual. The type of family life differs from country to country, but some features are general. There is an increasing tendency for the modern State to recognise only permanent monogamous relations, making room for divorce in very serious cases. The arguments against

\* J. Seth: *Ethical Principles*, p. 323.

† T. H. Green: *Principles of Political Obligation*, p. 231.

**polygamy**, as stated by T. H. Green, are as sound to-day as they were at the time of his writing.

- (1) Polygamy indirectly excludes some from regular marriage, and thus from the moral education which results from this. It is therefore a violation of the rights of these men.
- (2) It is a violation of the rights of the wife, who is morally lowered by exclusion from her proper position in the household and by being used, more or less, as the mere instrument of the husband's pleasure.
- (3) It is a violation of the rights of the children, who lose the chance of that free moral training which depends on the conjoint action of father and mother.
- (4) The terminability of marriage at the pleasure of one of the parties to it is a violation of the rights at any rate of the unconsenting party. Such a terminability cripples the wife in moral possibilities. It is an affront to her capacity for self-devotion and to her moral growth.\* Mere sexual impulse is not the basis of family life. The true basis is the conception of a good which is common to husband, wife, and children.

In the interests of the well-being of children, of public morality, and of social solidarity, it is desirable that only monogamous marriages which last through life should be recognised by the State. As a general rule, divorce should be granted only on the grounds of infidelity of either husband or wife. In cases where the aggrieved party is willing to condone the offence, the law should generally keep its hands off. The moral education of the children demands that the family should not be disrupted except for very serious reasons. The State should not punish infidelity as such. It should leave

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\* Cf. Green : *Principles of Political Obligation*, pp. 237-8.

the aggrieved party to set the law in motion, for the man in whom disloyal passion is neutralised by the fear of punishment is not likely to be a good father or a faithful husband.

Divorce for adultery should be made cheap and easy, and marriage should be made as serious a matter as possible. Divorce may be allowed also in cases of permanent lunacy and extreme cruelty. The grounds for allowing divorce for incompatibility of temperament are not so clear.

As the head of the family, the father is its protector and supporter. The law compels him to maintain his family in decency. He is not the absolute ruler of the family that he was in Roman times, for instance. The present-day tendency is to give equal rights to men and women. In relation to his children, the father shares responsibility with the mother as guardian. Children have no legal rights till they reach the age of majority, which is fixed differently in different countries. Till they reach this age, parents are required to support them. The duty of children to support their parents in old age is a moral duty and not a legal obligation. The moral education of children requires that the father and mother should act as a single authority, having equal power and status in all household affairs.

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## CHAPTER X.

### Particular Rights: THE RIGHT TO PROPERTY.

**1. The Importance of the Right to Property.**— Many people consider the right to property as one of the most fundamental rights of man. There are those who regard this right as of greater importance than the right to liberty, and even than the right to life itself. It is no wonder, therefore, that many of our laws relating to property are fuller, more precise, and more exacting than laws relating to life and liberty.

The idea of property lies at the root of the economic, legal, and political sciences. Economics for the most part is concerned with exchange values, involving property. Jurisprudence makes the idea of ownership even more fundamental. Political science considers not only the protection of person but also the protection of property.

The long history of human civilization on its material side centres round the ideas of property and ownership. From the days the semi-civilized man began to claim possession of his tools, ornaments, and similar personal things to modern times when the thoughts and activities of the average man hinge on such matters as income, dividend, and inheritance, the idea of property has been a supreme factor in the evolution of civilization. Modern civilization falls to pieces if we remove from it the institution of property. Individualism, nationalism, and imperialism—all have at least for one of their bases the idea of property.

**2. The Evolution of Property.**—The instinct of acquisition is common to both animals and human beings. A dog becomes ferocious when any one tries to deprive it of its bone. Wolves hunt in packs and share the prey among themselves and fight any intruder. The strongest among them probably get the lion's share. Ants store away the food which they do not require for immediate use. Squirrels sometimes forget to use the food which they put away for a rainy day. Birds at times carry away glittering objects, although they have no special use for them. These examples typify some of the important elements of property. But with the exception of the last example, all have one factor in common. They are forms of "property for use" and not of "property for power"—a very significant distinction made by Hobhouse.

When we turn from animals to human beings, we find that at a very early age children exhibit the acquisitive instinct in a marked degree. One of the first things that little children delight in is to grasp objects. They show a reluctance to let them go. Getting things seems to be much more natural and easy to them than giving them. Grown-up children collect all sorts of objects—bird's eggs, pebbles, bright-coloured rags, &c. They often collect them simply for the sake of collecting. Even fully grown people are not free from this passion, although they may collect more worthy objects such as rare books and prints. The attachment to private property and the enjoyment derived from it are much more intense than the care for public property and the enjoyment which it gives.

To prove that acquisition is instinctive with man is not a difficult task. What is much more important is to show whether any particular form of acquisition such as private property is more natural than other forms. This question can be dealt with either psychologically or historically. Prof. Hocking who approaches political questions from the psycholo-

gical angle claims that the various instincts of man can be summed up under "the will to power" or self-expression and that, if this "will to power" can be satisfied, there is no need to satisfy even such fundamental instincts as those of sex and acquisition *per se*. The "will to power" is at the root of all instincts. In other words, all instincts are merely transformations of the "will to power". From this it would appear that the desire for property is not such an inalienable part of human nature as some would make us believe. By saying this we do not intend to prejudice the case against private property. We are concerned only to show that more fundamental than the acquisitive instinct is the "will to power", although the "will to power" itself may and perhaps will demand private property within limits.

When we turn from the psychological approach to property to the historical evolution of property, we find diversity of opinion and evidence. It is generally assumed that private property is comparatively recent in origin—an invention of the State—and that communal property was the universal order in the early days. This is a mistake. Hobhouse clearly shows that there was no one rule or custom relating to property in early times. He finds that there was private property as regards personal belongings, but no universal rule as regards land. His investigations show that in early society there are cases of the communal tenure of land as well as cases of private ownership, subject to the eminent ownership of the group. In either case, property is held for use and not for power. In the words of Hobhouse himself, in early society "land may be communal property, or it may be personal, or the two principles may be intermixed, but in any case it (is) held for use and not for power." \*

With the development of agriculture, appropriation of land must have become more and more exclusive and perma-

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\* *Property, Its Duties and Rights (by several writers)* : p. 19.

ment, thus assuming the character of property in the modern sense. Jenks believes that when men emerged from the pastoral stage to the agricultural stage, they were members of an agricultural community. This community, according to the same writer, must have been a community, carrying on its work as a single body of co-partners. governed by customary rules to which all must conform. Ploughing was conducted on the co-operative principle. In course of time, the process of individualism led to the division of land in narrow strips, and the strips of individual owners were scattered over the whole area. About the twelfth century in Western Europe the spirit of individualism dissolved the agricultural community. This individualising process reached its culmination in the enclosure movement of the Middle Ages, and this movement has come down to modern times.

The history of the evolution of property shows that property is not simply the "creature of the State". It had its beginnings even before the definite appearance of the State. It began with the right of appropriation to a limited extent with regard to movables in primitive times and has been gradually extended to cover a wider field. It is instructive to know that the law of theft is earlier than the State. From the beginning property has meant a certain amount of foresight, labour, and skill. To-day it rests on industry to a large extent. The right of property in our complicated society includes many subordinate rights like the rights of transfer, sale, inheritance, bequest, patent, and copyright. The changing economic and social conditions of the world give rise to new rights of property in each generation.

Although, broadly speaking, the State has not created property as a whole, it has done a great deal to protect and develop it. By insisting on the free development of alienation or transfer, it has completely altered the original character of property. Its functions for the future in relation to property

are, says Jenks, "to refuse to protect or favour any appropriation without a due return on the part of the appropriator, —to restrain abuses of property, to raise the necessary revenue of the State from those best able to contribute to it, and to restrict the duration of proprietary powers within reasonable limits."

**3. Characteristics of Property.** (a) *Difference between possession and ownership.*—Property has been defined in various ways. The simplest definition is that it is a control of man over things, or an appropriation of material objects. No civilised society to-day allows property in persons. Property means ownership and is to be distinguished from mere possession. If I borrow a cycle from a friend, I am the possessor of the cycle for the time being, but certainly not its owner. The owner has full rights to do what he wills with his property, but not the possessor. The room which I hire in a hotel for the night is mine during the occupation, but I am not its owner.

The use and enjoyment of a thing alone are not enough to constitute property. I may belong to an institution which supplies uniforms to its employees. In such a capacity I have the right to the use of clothes supplied to me, to the extent of wearing them out in due course. But they are not my property. I cannot sell them or give them away or use them for any other purpose than that prescribed by the institution. In the case of a man who rents land from another for a considerable period of time, the owner may agree to dispense with some of his rights to the land. But what control the lessee possesses is a delegated right. Similarly, the trustee of a property has only a limited control, although he may be its nominal owner.

(b) *The exclusiveness and permanence of property.* From all that we have said above, we draw the conclusion that property means exclusive and permanent control over things, recognized by society. Thus Hobhouse remarks, "property

may be absolute or partial, held by one person or many, or by a company, but it must be exclusive as against others, and it must have some permanence."\* A municipal washing-house which different people may use exclusively at stated periods is not the property of any one of them in particular. The rights enjoyed by them are of a temporary or limited kind. Exclusive use alone is not enough to constitute property. We need permanence as well. Sidgwick is right when he claims that the right of excluding all others permanently from interference with a particular portion of matter is the most essential element in the right of property. †

(c) *The right to abuse property.* If control is to be complete, the owner of property should have the right not only to use property but also to abuse it. This idea is expressed in the popular saying. "A man may do as he wills with his own." A man may stand on the bank of the Ganges and religiously throw away all his rupees into the river. No law of the land can check him in doing it. This right to destroy property, however, is not recognized with regard to all forms of property. As regards certain types of property, society grants the right to use property in any way the owner thinks fit but it does not grant him the right to destroy it or allow it to deteriorate unduly. Thus, in some cases, a land-owner is not allowed to cut down all the wood in his land. Still, as a general rule, we may accept Sidgwick's observation that the right to destroy property totally or partially "is included in the common notion of the right of property."‡

(d) *The right to alienate property.* Complete control over property is generally taken to mean the right to alienate property. It stands to reason that if I can abuse property or allow it to deteriorate, I certainly have the right to give it away to any one I like, or exchange it for something else.

\* *Property, Its Duties and Rights* : p. 2

† Cf. *Elements of Politics* : p. 69

‡ *Ibid.*

The right to bequeath property is not so clear, for such a right virtually means the control of property after one's death. In our modern society there is not much disposition to allow such control to continue indefinitely. Apropos of this, Sidgwick remarks that the right of property, when used without qualification, means to him "the complete right of exclusive use, including the right to destroy and the right to alienate, but not necessarily the right of bequest." \*

(e) *Property requires social recognition.* Like all other rights, the right of property requires the recognition of society to make it valid. A right is nothing if it does not have behind it the sanction of society. This is particularly true of property, which is largely the result of co-operative endeavour in our present-day society. The argument that property is a natural right carries with it no conviction any longer. As late as the latter part of the eighteenth century Blackstone included property among the "absolute rights" of man, by which he meant "those which are so in their primary and strictest sense; such as would belong to their persons merely in a state of nature, and which every man is entitled to enjoy whether out of society or in it." (Commentaries, i. 123.)

The socialist argument goes to the other extreme and regards property as entirely the creation of society. This point of view is just as false as the extreme individualistic point of view that society must recognize the right of property, but cannot modify or control it. For ourselves, we believe that property has an important social aspect and that it requires the recognition and protection of society for its existence. Although property is not the creation of the State, still it is the State which alone enables property to be gathered and held. Therefore, property cannot be claimed against the well-being of the State. All this means that the right to

\* H. Sidgwick : Elements of Politics, p. 70.

property is relative, and is, under no circumstances, absolute. Property is a form of regulated control.

(f) *Limitations of property.* If property is not to become a danger to society, it needs to be seriously limited. Even such a staunch supporter of private property as Blackstone recognizes that the legislature may "oblige the owner to alienate his possessions for a reasonable price." (Commentaries, i. 139.) It is true that Blackstone does not use the ugly word "expropriation", but the form of words he employs means expropriation with due compensation. Such expropriation is a recognized practice everywhere to-day. The sovereignty of the British Parliament is so complete that it can expropriate property even without compensation. In the U. S. A. property is protected by the constitution, and interferences with it must be justified by specific powers like eminent domain, the taxing power, and the police power. \*

The American and the French constitutions, influenced as they were by the revolutionary thinking of the eighteenth century, speak of rights as natural and absolute. But even they recognize that property can be taken from the individual under certain conditions. Thus, the French Declaration of Rights of 1791 lays down that "the right of property being inviolable and sacred, no one ought to be deprived of it, except in cases of evident public necessity, legally ascertained and on conditions of previous just indemnity." † The fifth amendment to the constitution of the U. S. A. declares that property shall not be taken for public use "without just compensation." It is significant that neither of these written constitutions defines the terms "public necessity", "legally ascertained", "just indemnity", and "just compensation."

A second important limitation of property which is universally recognised is that appropriation of the surface of the

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\* Cf. Geldart: *Property*, p. 206.

† Quoted by D. G. Ritchie: *Natural Rights*, p. 265.

earth does not necessarily entitle its owner to the appropriation of all the minerals below the surface.

(g) *Property as power.* The limitation of property needs to be specially emphasised in our modern society, because property means power. In one sense property spells freedom. It is a necessary corollary of the right to free life. In another sense property means restriction of freedom. It particularly restricts the freedom of the toiling masses. Contrary to the practice of simpler societies where the bulk of property was "property for use", much of the property in our industrial society is "property for power." It confers upon the owner practically unlimited power over the lives and destinies of people. Property which strictly meant control over things has come to mean control over persons through things. It displaces the opportunities of others. Ownership by one means that others do not have that opportunity of ownership. Hobhouse emphatically asserts that modern economic conditions have virtually abolished property *for use* for the great majority of the people and have brought about the accumulation of vast masses of property *for power* in the hands of a relatively narrow class.

(h) *Ways of acquiring property.* From a very early time attempts have been made to justify the acquisition of property on moral grounds. The socialists are not alone when they claim that the individual has a right to an adequate return for his labour. The idea of a minimum wage to everybody strikes a sympathetic chord in the hearts of all men. Aquinas goes so far as to maintain that in the case of necessity a man may take what he needs, for in such cases all things are common.

In our modern society, however, these are not the grounds on which property can be acquired. Considerations of morality and natural justice may be urged in altering the present law of property. But the only way of acquiring

property is the legal way. The legal rights of property can be classified under the following five heads:—

- (i) Property may be claimed on the basis of *discovery* or finding or catching. This principle applies to primitive societies, to the appropriation of land in unoccupied areas, and to the catching of wild animals and fish which do not belong to any one in particular.
- (ii) Property may be rightfully claimed in the things that one has made. The ground on which Locke rests the right to property is "that with which a man mixes his labour is his." It stands to reason that when I fence a plot of ground and cultivate it that I have a better claim to the produce than has any one else. Ownership in such cases is dependent on *work*.
- (iii) Property may be in the form of *growth*. A bumper crop of mangoes on my mango-tree along with the chaff in my field is my own. The increase in my herd of cattle naturally belongs to me. Interest and rent also are generally regarded as belonging to the same category. Property begets property.
- (iv) Property may take the form of *gift*. Whatever is given to me belongs to me. If property is mine, I can give it away by will or testament, or according to the legal principles of descent. The assumption is that property can be transferred at the will of the owner.
- (v) Property may be claimed according to the laws of *transfer*, *exchange*, and *contract*.

(i) *Kinds of property.* There are some things which in their very nature cannot be appropriated, e. g., air. Fish in the sea was supposed to belong to this category. There are some things which ought not to be appropriated by private persons but rather by some public body. Roads, parks, and

municipal buildings belong to this category. The important question here is in regard to the line which is to be drawn between things which should be privately owned and those which should be owned by the community at large. In answer to this question, some would say that consumption goods like food and clothing should be privately owned, while production goods like land and capital should be publicly owned. Into the merits and demerits of this point of view, we shall not enter now.

Things which can be privately owned are divisible into two classes :—

- (i) tangible things, and
- (ii) intangible things like the good will of a business which can be bought and sold.

Patent rights, copyrights, etc. fall under the latter category. As regards tangible things, it is necessary to keep in mind the all-important distinction between land and natural resources which are limited in quantity and are the material out of which practically all wealth comes, and movables like books, furniture, etc.

**4. The Case for and against Private Property.** It is an irony of fate that the moment the term 'property' is mentioned, people almost invariably think of it as meaning private property and make the further unwarranted assumption that private property is unsafe under any system other than individualism. It needs to be remembered that in no country is all property absolutely private and personal. The various types of property which must be distinguished are private property, e. g., personal belongings; family property, e. g., the joint family property in India; corporate property, e. g., an incorporated company; municipal property, e. g., a municipal washhouse or dispensary; common property, e. g., the village meadow; and State property, e. g., the post office. This classification is sufficient to show that we cannot force property into the simple dichotomy, public or private. The problem of

property is, therefore, not simply a problem of the individual versus the State.

As regards the assumption that private property can thrive only under an individualistic system, it should be remembered that socialism as a whole is not opposed to the institution of private property. It is only opposed to private capital. It is true that the property allowed under socialism will be in strict accordance with a person's desert, but it will still be private property. Even under systems other than individualism and socialism there will be property, but not necessarily private property. The only system which is opposed to property as such is anarchistic communism.

The case for private property has been stated and retlated so often that some of the arguments at least have worn thin. The principal arguments in defence of private property at its best are :—

(i) possession of private property gives man a sense of security. The fate of the propertyless, landless man in the industrial society of to-day is, in some ways, worse than that of the slave. The slave-holder claims the slave to be his property, and, in order that the property may not deteriorate or become uneconomical in any other way, it is to the interest of the slave-holder to see to it that the slave and his family are properly fed, clothed, and sheltered. The landless, propertyless man has no such advantage, as he belongs to no one in particular. The freedom which he enjoys is, in very many cases, the freedom to starve. Property enables a man to provide for the future. The individual and his family are protected from the fear of starvation. There is a certainty of satisfying wants as they arise from day to day. Property affords a sound basis for family independence.

- (ii) A man of property is said to be one who has a stake in the country. He is not one who is likely to be swept off his feet by every new-fangled doctrine leading to violent change. He is peaceful and law-abiding and has no disposition to change the present order unless it can be clearly shown that the new order is likely to be infinitely better. He is a man of prudence, deliberation, and foresight in all his actions.
- (iii) A man who has means at his disposal does not need to accept the work that he does not desire. Property gives him a sense of independence. In our modern society many a man is forced into a type of work for which he has no special aptitude and which, to some extent at least, is a millstone round his neck. Plato's ideal of every man finding his proper place in society and being happy in the due performance of the functions attached to that place is still far from realisation.
- (iv) Laski points out that a man of property can make life an artistic thing. He can devote his means to the fostering of art, science, and literature. He can become an explorer in the intellectual and other fields. He can invent a machine or a new process in a machine. He can develop in his children a taste for beautiful things and make life a source of joy and satisfaction to them. In short, property makes it possible for him and his children to have a share "in the life creative". The man of property has direct and immediate access to the social heritage of the ages.
- (v) One of Aristotle's chief criticisms of Plato's communism is that without private property the individual has no chance to be liberal and

hospitable. It is true that some will use their property for selfish and even mean purposes. But this is the price that society has to pay in order that some at least may be generous.

- (vi) A certain amount of private property is necessary for the highest life. It is an aid to the development of character. It is an expression of personality.
- (vii) It is often stated that if we restrain a man's freedom to acquire, we shall dull his energy. Private property gives a man the most effective stimulus to exertion. It is the fear of want and starvation that often keeps a man's nose close to the grind-stone. If private property is restricted, it is argued, capital will flow to other countries; also, men of the greatest ability and initiative will seek new countries where they can use their talents.
- (viii) Raleigh observes "there are many operations connected with the management of land and capital, which are most efficiently performed by private persons, working at their own risk and for their own advantage."\* According to the same writer, in ancient times when land was cultivated in common, under strict customary rules, it was cultivated so badly that it had eventually to be given up in favour of private property in land. Therefore, to revert to a system which has been tried and abandoned is neither wise nor expedient. Raleigh further notes that "it is a matter of common knowledge that officials are less active, less frugal, and less eager for improvement than private traders."†

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\* T. Raleigh : Elementary Politics, p. 111.

† Ibid.

- (ix) Private ownership gives the individual a deep sense of pleasure and satisfaction which no other form of ownership can give. It is the magic of private property which converts a sandy desert into gold. A humble cottage which a man can call his own is a source of greater delight to him than a palatial house which he is allowed to occupy at the discretion of State officials.
- (x) Private property, it is argued, is a measure of a person's ability, at least within limits. Every ambitious man desires success, and the income that he commands is roughly an index to his success. From this point of view, poverty is said to be a punishment for indolence, vice, thriftlessness, or general inability. Green speaks as though, with the needful education and self-discipline, every man can become a small capitalist. All that the working classes need is, according to him, a sense of responsibility. Their impoverishment and recklessness are due to circumstances unconnected with the accumulation of wealth by capitalists.
- (xi) A principle which would be accepted by all is that tools should be given to those who can use them. Private property is said to be an extension of this principle. Those who adopt this position say that, generally speaking, wealth is in the hands of those who can use it in the production of further wealth, and that such an arrangement is in the interest of everybody. Green believes that "accumulation by one man does not itself naturally imply deprivation of other men, but rather the contrary."\* "The wealth of the world is constantly increasing in proportion as the con-

stant production of new wealth by labour exceeds the constant consumption of what is already produced."\* Therefore, if trade and labour are left free, it means that wealth is constantly distributed in the shape of wages to labourers and of profits to those who mediate in the business of exchange.

*The case against private property.* Needless to say, many of the advantages pointed out above are not realised in practice. They are a statement of what is possible rather than of what actually obtains in practice. The institution of private property has had a very long history, and if we study this history carefully we find that the case against private property, is just as strong, if not stronger, than the case for it. The socialists argue that many of the defects are inherent in the system, while the individualists stoutly hold that they are mostly accidental and that they can be removed by education, enlightened public opinion, and a certain amount of social legislation.

(i) A glaring defect in the institution of private property which meets the eye of even the ordinary observer is that the system perpetuates the division between the rich and the poor. Inequality begets inequality and divergences breed divergences. Although we are not prepared to go to the extent to which Karl Marx goes in believing that the rich are becoming richer and richer and the poor poorer and poorer, we cannot deny the fact that there is a constant tendency for property to be more and more concentrated in the hands of the few—and these few are not necessarily those who render the greatest service to society. The majority who are engaged in the production of wealth "have little or no hope of

enduring gain from the process they support.” \* Laski is altogether right when he says, “a community divided into rich and poor is, when the latter are numerous, built upon foundations of sand.” † Generally speaking, there is no proportion between what the capitalist and the labourer receive for their respective services. This is particularly regrettable when it is remembered that “property is less a product of individual exertion than of the total forces in society.”

- (ii) Property undoubtedly gives its owner a sense of security. But such security is not always used for the most worthy purposes. It often leads to luxury and indolence. A serious indictment of the present order is that it obliges the masses to incessant toil in order to maintain a few in parasitic idleness. Those who are freed from the necessity to labour do not generally devote their time and energy to creative effort. Some like Rockefeller may use their colossal wealth for social purposes, but such men are few and far between. Besides, as Laski notes, “society has to weigh against the ability.....to be generous, the cost of arriving at the point where the generosity is possible.” ‡
- (iii) Among radical thinkers we find many a person who is opposed not to private property as such, but to the accompaniments of private property such as private capital (including rent and interest), unlimited wealth, control of the means of production, bequest, and inheritance. It is generally recognised that there must be private

\* H. J. Laski : A Grammar of Politics, p. 176.

† Ibid.

‡ H. J. Laski : A Grammar of Politics, p. 178.

property up to a certain point. But it goes without saying that it must be restricted beyond that point. The collectivist holds that a man's right to property is satisfied if he has property in what is known as "consumer's goods". There is no logical reason why a person should claim property in the instruments of production. If the manager of a mill, e. g., is to have full freedom of action, it may be necessary for him to have personal property on a large scale. But this is no reason why he should own the mill. The collectivist holds that the community as a whole should own the means of production. There may be economic reasons against such a course, but there certainly can be no moral reasons.

- (iv) The last mentioned argument applies with special force to that point of view which regards private property as essential to the expression of personality. Private property is justifiable as being the material means upon which the will of man can exercise itself, but this is no reason for unlimited private property, nor for property in the instruments of production. To justify private property wholesale, in all its varied aspects, in the name and for the sake of personality, is as dishonest as it is unconvincing.
- (v) Private property no doubt furnishes a powerful incentive to labour. But this argument is grossly exaggerated in current discussion. It is often forgotten that private gain is not the only incentive to labour. There is in most men, in varying degrees, a disinterested desire to serve. Lord Haldane remarks that the desire to distinguish himself in the service of the State is as potent a motive with the brain worker as the

desire to amass a fortune. He further says, "If he thinks he will be recognised because of his public spirit and his devotion to his duty, that public spirit and devotion to duty will make him do anything; there is no sacrifice of himself he will not make."\* Plato was neither a fool nor a visionary when he claimed that the satisfaction derived from performing a congenial task or from rendering public service was a reward in itself. In such cases, he held, no external reward was necessary.

- (vi) It is generally admitted that ownership is justifiable only when it is correlated to service to society. In other words, no man has a right to property except as a return for functions performed. Even the staunchest supporters of private property cannot but admit that, at best, there is only a very rough correlation between ownership and service. The law of demand and supply which is regarded as the inexorable law determining reward does not always work satisfactorily. It is freakish at times. The mere fact that an effective demand of society is being met does not mean that the person meeting it is entitled to the highest reward that society can give him. For instance, as Laski argues, there may be a demand for slaves in Abyssinia and for obscene literature all over the world. Does this mean that we should supply all these demands?
- (vii) Furthermore, if we trace the history of property, we shall find that property, particularly in land, has not had a respectable ancestry. Green holds that land was originally appropriated by

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\* Quoted by H. J. Laski: A Grammar of Politics, p. 215.

conquest. In other words, land was occupied not by labour, but by force, and that, too, in a way prejudicial to the common interest. "Landless countrymen, whose ancestors were serfs, are the parents of the proletariat of great towns." \* Justice for the proletariat demands that if private property in land is to be retained in the hands of the descendants of the original "conquerors", compensation should be made to the proletariat in the form of provisions for their health, housing, and schooling. Such compensation, however, is conspicuous chiefly by its absence.

(viii) Judging the rightness of private property from the point of view of its conduciveness to social well-being, we are obliged to say that we cannot justify it without serious qualifications. Private property in modern times has certainly meant colossal production, increased prosperity and comfort, maximum utilisation of the natural resources of the world, and marvellous growth of material civilisation. Such progress in the material world, however, has not meant an equal progress in the moral and spiritual fields. Values have been vulgarised to some extent, and there is a widespread tendency to worship power and wealth as such. Modern society is so organised as to whet the desire for personal gain. It teaches a man to compete with his fellow-men and scramble for power and wealth, rather than to co-operate with him in achieving common ends. It makes effective citizenship for the masses practically impossible of attainment. Even in the material world, the opportunities for

\* T. H. Green : *Principles of Political Obligation*, p. 226.

development are not so great as they have been in the recent past. We have almost reached the saturation point there.

(ix) In pleading for a new order of things, Laski sums up the case against the present order in these trenchant words: "The present system is inadequate from whatever angle it is regarded. It is psychologically inadequate because, for most, by appealing mainly to the emotion of fear, it inhibits the exercise of those qualities which would enable them to live a full life. It is morally inadequate, in part because it confers rights upon those who have done nothing to earn them, in part because where such rights are related to effort, this in its turn has no proportionate relevancy to social value. It makes part of the community parasitic upon the remainder; it deprives the rest of the opportunity to live ample lives. It is economically inadequate because it fails so to distribute the wealth it creates as to offer the necessary conditions of health and security to those who live by its processes. In the result, it has lost the allegiance of the vast majority of the people. Some regard it with hate; the majority regard it with indifference. It no longer infuses the State with that idea of purpose through which alone a State can prosper." \*

**5. Theories of Property.** Before we enter upon a discussion of the typical theories of property current to-day, it will be worth our while to consider the views held on the question by representative thinkers from very early days.

*Plato.* Turning to the Greek period, we find that Plato and Aristotle devoted much attention to this question. It is

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\* H. J. Laski : A Grammar of Politics, p. 216.

a well-known fact that in his *Republic* Plato advocated a community of property and a community of wives and children for the upper classes—the rulers and warriors, his reason being that without such communism the rulers and warriors would become selfish and govern the State in their own interest. Plato did not object to the working classes holding a certain amount of private property under governmental supervision, but the upper classes were to be free from it, for to ruin the upper classes, he believed, meant the ruin of the whole society. It is noteworthy that Plato's communism was essentially moral and spiritual in its character, unlike modern communism which is largely an economic movement. According to Plato, all must "rejoice and grieve alike at the same gains and the same losses" in order that society might be a unified body and in order that the guardians who give the tone to society might give their undivided thought and attention to the well-being of the social whole. Thus Plato's communism is a part of his general scheme of justice and stands or falls on the strength or weakness of his social and ethical theory. In his later writings, Plato considerably modified his earlier position and allowed private property under strict governmental supervision, but nobody was to be more than five times as rich as any of his neighbours.

*Aristotle.* Aristotle was a vehement critic of Plato's communism. His arguments are

- (1) private property is more conducive to a real unity of sentiment than communism ;
- (2) it is economically superior to communism in that it gives every man an interest in his own possessions ;
- (3) it is more conducive to the development of character ;
- (4) it makes liberality and generosity possible ;
- (5) ownership is a source of pleasure.

In these arguments of Aristotle we find the earliest

traces of modern individualism and idealism on the question of property. There is a forcible statement of the familiar individualist argument that the magic of private property can convert "sand into gold" and that the inequalities arising out of private property can be modified by cultivating a generous disposition in man. There is also the idealist teaching that property is necessary for the development of the higher life of man and that it is the most effective stimulus to character and personal exertion. In spite of his firm conviction in the rightness of private property, Aristotle never went to the extent of justifying unrestricted property in private hands. He was by no means an unqualified individualist. Like a true Greek, he taught that extreme inequalities should be avoided. He further condemned capital and usury.

The chief defect in Aristotle's view is that the ideal of self-realisation in the interest of which property is justified is meant only for the privileged few, viz., the freemen. The slaves and aliens are excluded from such an ideal. The type of morality taught is an aristocratic class morality. Our modern belief, however, is that "whatever inequalities must subsist among men, every man has the divine and equal right to realise himself."

The *Stoics* adopted a more universalistic and humanitarian view of life; this tendency was accentuated by early Christian teaching. The ancient Roman ideal of property, as depicted by a later Roman poet, is "Their private property was small: what was in common was large." The Roman law recognises *occupation* as a valid title to property.

*Jesus Christ and his followers* accepted the fact of private property, without praising it or blaming it. Their teaching was :—

- (1) personality is more precious than possessions;
- (2) whatever wealth a man may have is a gift of God and, therefore, he should administer it as a faithful steward;

- (3) riches constitute a danger ; and
- (4) the Christian should cultivate an attitude of detachment towards property.

The early Christian believers practised some form of communism, but soon gave it up as being impracticable. While it lasted, "No one said that aught of the things which he possessed was his own"; and in that sense "they had all things in common." Like Plato's communism, it was moral and spiritual in its basis, rather than economic; and unlike modern communism, it was voluntary and not compulsory, and was a communism of consumption only.

Both the early and later Church Fathers treated charity or almsgiving as an act of justice and not merely of mercy. They insisted on the idea that charity was the return of a debt owed to the poor. In their teaching they combined common ownership with individual use. The community was regarded as the ultimate owner of all property.

*St. Peter Damian* in the eleventh century declared that men who are rich are *dispensatores* rather than *possessoris*. *St. Thomas Aquinas*, the greatest theologian of the Middle Ages, held that in the case of extreme necessity, all things are common. When a man is in evident and urgent need, he said, he may legitimately take either openly or by stealth what he needs. In other words, necessity knows no law.

The modern period which begins with the Protestant Reformation is somewhat responsible for the excessive individualism of to-day. The earlier teaching of the Church regarding property was kept up by some of the Reformers. But, on the whole, the emphasis was in the direction of competition, mercantilism, and capitalism, leading to the deification of private property.

*John Locke* in the seventeenth century advanced what has come to be known as the Labour theory of property. According to this theory, that with which a man mixes his labour is his. This right Locke limits by two considerations:

In the first place, there should be "enough and as good left in common for others." Secondly, only that which a man can use can properly be called his. Applying his theory to land, Locke himself realised that there was not "enough and as good for others" anywhere in the world, except in the Americas of his day. Therefore, this part of his theory is practically useless in modern times. The second consideration that a man's right to the fruits of his labour is determined by his power to use, Locke intended to serve as a basis of extreme individualism. But Karl Marx made it the basis of extreme socialism and advanced the astounding theory that "the labourer has a right to the whole produce of his labour." Both Locke and Marx forgot that material goods with which a man can "mix his labour" do not lie about unclaimed in the modern world. We have to reckon with the fact of appropriation. Even if a particular piece of raw material is unappropriated, what is to be done if two people want to "mix their labour" with it at the same time? Furthermore, as Ritchie rightly remarks, "All labour in a civilised society is social and not individual; and therefore, no law of nature helps us to determine *apriori* how the produce of labour ought to be distributed." \*

In spite of its obvious defects, Locke's theory contains some valuable elements:

- (a) every man has a right to the opportunity of labour;
- (b) he has the right to the fruits of his labour;
- (c) from the point of view of commonsense and morality, no one has a right to anything more than what he can use in the best interests of himself and of society at large.

*The Utilitarians*, of whom Bentham was the leader, upheld the existing rights of property because of their tendency to promote the public good. Mill and Sidgwick,

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\* D. G. Ritchie : *Natural Rights*, p. 269.

who were on the whole sympathetic towards socialistic aspirations did not accept socialism as their creed because they feared that production would suffer greatly under it. Spencer, whose ethics were fundamentally Utilitarian, "revived what was substantially the theory of Locke, and justified the extremist view of the sacredness of property on the ground of a man's natural rights to the produce of his labour." \*

Among German philosophers, *Kant* accepted the institution of private property and held that property in civilised society could only be acquired by the implied consent of society. He was partly responsible for the disposition among individualistic philosophers to regard the rights of property as natural rights. At the same time he laid the foundations of the idealistic theory of property, according to which property is necessary for the realisation of one's will. In his own words: "Anything is mine by right, or is rightfully mine, when I am so connected with it that if any other person should make use of it without my consent he would do me a lesion or injury." †

*Hegel* carries the idealistic view of property to its logical conclusion. Property, he says, is "the first reality of freedom." It does not mean mere provision for wants; it is the material counterpart of will. As against Plato, Hegel holds that the principles of individual choice, initiative, and property are necessary to the complete communion of intelligent beings. In his own forcible words: "A person has the right to direct his will from any object, as his real and positive end. The object thus becomes his. As it (the object) has no end in itself, it receives its meaning and soul from his will. Mankind has the absolute right to appropriate all that is a thing." Or, again, "The doctrine that the foundation of property, lies in

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\* *Property, its Duties and Rights*: p. 55.

† *I. Kant: Philosophy of Law*, p. 61.

the will, that property is 'realised will,' is true enough if we attach a cert. in meaning to 'will'; if we understand by it, not the momentary spring of any and every spontaneous action, but a constant principle, operative in all men qualified for any form of society, however frequently overborne by passing impulses, in virtue of which each seeks to give reality to the conception of a well-being which he necessarily regards as common to himself with others."\*

*Green* † continues the idealistic tradition that property is an instrument for the realisation of personality. Appropriation of property, he says, is an expression of a man's will. It is an expression of the individual's effort to give reality to a conception of his own good which is at the same time a common good. It is the concrete expression of the person's desire for self-satisfaction. It is different from mere provision to supply a future want. When an object is appropriated, the consciousness says to itself, "This shall be mine to do as I like with, to satisfy my wants and express my emotions as they arise."‡

As rightly observed by Green, an essential condition of property is social recognition. Property does not rest on contract or on supreme force. It is an instrument of expression and satisfaction. It means that the appropriator takes and fashions certain external things, certain things external to his bodily members, in accordance with his will. When property is established in these external things, they no longer remain external to the appropriator. They become an extension of his personality. Through them he gives reality to his ideas and wishes.

The right to property is a necessary corollary of the right to free life. It is simply the right to the instruments of such free life. It is for a common good. Property is thus 'realised

\* Hegel: *Philosophy of Right*, § 217.

† *Principles of Political Obligation*, Sect. N.

‡ *Principles of Political Obligation*, p. 213.

will.' It is a will made concrete. Will, rightly understood, is not the momentary spring of any and every spontaneous action, but a constant principle, operative in all men qualified for any form of society. In virtue of this will man seeks to give reality to the conception of a well-being which he necessarily regards as common to himself with others. "Thus the act of appropriation and the recognition of it constitute one act of will, as that in which man seeks a good at once common and personal." Common well-being is the basis of the right of property. Man has a desire to appropriate. Society places certain restrictions on him by a customary recognition in the interest of a common well-being. This customary recognition is based on a moral or rational will. Property no doubt comes into existence through conquest and government. But its ultimate foundation is a spiritual principle. Without that principle it could not have come into existence, nor would it have any moral justification at all.

We have made full extracts from Green, because they seem to us to be an able presentation of the justification of property from the idealistic standpoint even to-day. They are free at the same time from the excesses to which Hegel carries his views on property. The vital question is, of course, the amount of property that a person should be allowed to possess. On this question the idealistic theory cannot give us any detailed guidance. If property is necessary for the expression of one's personality, it follows that every person who is capable of leading a rational existence should have it. Green recognises the validity of this position, but does not help us to solve questions arising out of the institution of private property. He regards private property as the more ethical institution as contrasted with the primitive clan system. This may be true enough, but the objections against the clan ownership of property cannot very well be applied to modern socialistic schemes. Modern collectivism does not necessarily involve such rigid customs as did the clan

system. It might allow competition, the law of demand and supply, etc.

Green admits the defects of the modern system of private property. But he thinks that these defects are due to particular historical causes which to our mind at least are certainly not the true causes. Thus he says that the root of the present system is that the landowners are the descendants of conquerors and that the present proletariat are descendants of landless serfs. He further speaks as though all that the working classes need is a sense of responsibility and that the existence of a practically propertyless class in the modern State is an abuse of the institution of private property and not a necessity. All this seems very unconvincing. It is too easy a way of getting out of the difficulty to say that the impoverishment and recklessness of the labouring classes "are due to antecedent circumstances unconnected with the accumulation of wealth by capitalists." The socialist argues that many, if not all, of the defects of the present system are inherent in it.

*Bosanquet's* ideas on property are in all material points the same as those of Green. He insists that for a man to have all his needs provided for by the State or by society is to reduce him to the level of a child. Property is essential for the development of character, for, his argument runs, without some property or capacity for acquiring property there can be no individual liberty, and without some liberty there can be no proper development of character. All this, however, does not mean a justification of the whole system of private capital, as *Bosanquet* seems to imagine. Besides, as *Rashdall* points out, *Bosanquet* seems almost blind to the bad effects upon character of the present almost unlimited competition and facility for accumulation. If, on the one hand, property is an aid to character, we must not forget that on the other, the present system fosters intense selfishness.

### TYPICAL THEORIES OF PROPERTY.

1. **The Occupation Theory.** According to this theory,

the man who first gains actual possession of an article of value is its rightful owner. It will readily be seen that this theory has little or no application to modern times. In very early times when the sense of right and wrong was still undeveloped, the view which based property on first occupation marked a great improvement. Likewise, in the case of newly discovered countries like the U. S. A. and Australia, such a view certainly had its value. It provided a rough-and-ready measure of justice and stimulated the effective occupation of virgin land. But in a settled state of society it is practically useless.

Generally speaking, the theory has been advanced by believers in the social contract theory to apply to private property rights in the state of nature. But even there, it is capable of application "only to those articles of value which are considered the direct gifts of God or nature."\* In Grotius we find a clear statement of this theory. According to him, in the state of nature, each man might take for his use what he would and consume what he could. This state of affairs, Grotius believes, would have continued indefinitely if man had retained his primitive simplicity, or had lived in great mutual goodwill. But with the rise of "a more exquisite kind of living, there arose the need of industry which particular individuals might employ on particular things." This meant that things soon became property. First occupation gave the *right* of possession and use, and contract, tacit or expressed, transformed this right into property.

Rousseau gives qualified support to this theory. He considers three conditions to be essential before possession can become ownership :

- (1) the land shall never have been occupied ;
- (2) only such a quantity shall be occupied as is necessary for subsistence ;

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\* W. W. Willoughby : Social Justice, p. 79.

(3) possession shall be established not by an empty ceremony, but by labour and cultivation.

In criticising the occupation theory, Willoughby makes three important points :

- (1) Rights in a completely non-social and non-civil state are an impossibility.
- (2) The theory "selects as a basis for a right a fact that may be, and in truth often is, brought about by simple chance, fraud, or open force." \* Such a basis, it is clear, cannot be accepted as the basis of a just principle of right.
- (3) The theory is not applicable to conditions as they now are. It "renders it absolutely impossible, except in the rarest cases, to ascertain the rightfulness of any proprietary rights whatever." †

**2. The Legal Theory.** This theory is expounded at great length by Willoughby. According to it, "the civil law is able to furnish not only the legal, but the ethical, basis for the institution of property."‡ On first reading, Montesquieu, Hobbes, Bentham, and Rousseau seem to support this theory, but in reality they do not. Montesquieu employs this theory to explain the origin of property, but he does not use it to uphold it forever. Hobbes's views on property are much the same as those of Montesquieu. Quoting approvingly from Cicero, Hobbes writes, "Take away the civil law, and no man knows what is his own, and what another man's." The ground on which Hobbes supports private property may be stated in the form of a series of related propositions : private property is a part of the political order ; maintenance of this order is essential to human happiness ; it is man's ethical duty to seek his own happiness ; therefore, he should accept the law of property along with the other laws of the State, as

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\* W. W. Willoughby : Social Justice, p. 82.

† Ibid.

‡ W. W. Willoughby : Social Justice, P. 83.

binding upon him both morally and legally. Taking such a view of property, it is not surprising that Hobbes does not see any need to go behind the law for a justification of property.

Although Bentham takes much the same view, he admits the ethical justifiability of disobeying legal commands. As a Utilitarian, he recognises at the same time the general beneficence of the laws which secure men in the possession of their property. In his own forcible words, "Property and law are born together. Before laws were made there was no property; take away laws and property ceases." Criticising this point of view, Charles Comte rightly says that it would perhaps be more correct to say it is property which gave birth to civil rights than *vicversa*. He further says, "Civil law furnishes the guarantee of property, but it is human industry which gives birth to property." Rousseau adopts the general view "that it is only as an institution made secure by the protection of the political authority that the foundation of property is to be found in the law." \*

*Criticism.—*

- (1) It will be universally admitted that the law guarantees to the owners of property a secure possession and quiet enjoyment of their property. But this view does not give us any clue as to the ultimate justifiability of property. Law is not our final standard.
- (2) The anarchists claim that the coercive authority of law is not needed for the maintenance of private property rights, and that these rights may be secured by mutual agreement and co-operation.
- (3) It is argued by some that law protects only those who have property and that the propertyless are practically excluded from acquiring any wealth.

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\* W. W. Willoughby : *Social Justice*, p. 90.

A propos of this, Rousseau says that under bad governments law "serves only to maintain the poor in misery and the rich in his usurpation." The impartial reader will have no hesitation in agreeing with Willoughby when he writes "It has not been demonstrated that, in return for the protection which the law gives, the property owning classes have done, or been compelled to do, all that they should have done for the promotion of the welfare of the social whole."\*

(4) Even if we are prepared to admit that law is necessary to recognise and protect property rights, law cannot help us in deciding the extent to which private property rights should exist.

**3. The Labour Theory.** We have already considered some of the elements of this theory in relation to John Locke. According to it, that with which a man has "mixed his labour" is his. The socialist version of it is that "economic goods should be distributed wholly to those who have produced them by their labour." This theory is really a corollary of the occupation theory, for "acquisition by means of labour depends ultimately on possession by means of occupation." † Besides the criticisms already mentioned, the theory is open to the following objections:—

(1) It is a mistake to think that labour creates all value. Economists hold that capital and land are as much agents of production as is labour. Whether we agree with this view or not, there is no gainsaying the fact that in a complicated society like ours there is no such thing as individual labour. The social order is just as essential for the peaceful production and disposal of property as labour itself. In concrete language, it means

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\* W. W. Willoughby: *Social Justice*, p. 95.

† D. G. Ritchie: *Natural Rights*, p. 268.

that in the making of a loaf of bread (the illustration chosen by Locke), it is not merely the baker, the miller, the farmer, the ironworker, and the miner who have a legitimate claim to a portion of the produce, but also the magistrate, the policeman, the soldier, the man of science, and the schoolmaster. All this goes to show that in an organised society, it is not the individual as an individual who mixes his labour with nature but it is the individual as a member of society. Most labour is social labour.

(2) Socialistic advocates of the labour theory assume that landlords and capitalists are exploiters and that the labourer alone creates values. On the basis of this assumption they argue that labour is the sole standard of distributive justice. Even if it be granted for the sake of argument that labour is the source of all wealth, are we not to distinguish, if possible, between what the labourer contributes by his effort and what he contributes as a result of inherited capacities or of the advantage derived from his social environment? On grounds of justice, no individual has a complete right to himself. He is under obligations to his parents, to his education, to his heredity, &c. In fact, he belongs to the whole of mankind. The labour theory makes no distinction whatever between what we inherit and what is due to industry and faithfulness. As Wil'oughby puts it, it does not see any obligation "for those who, through no fault of their own, are handicapped in the race of life."\* Mill puts it even more strongly when he says, "It is giving to those who

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\* Op. cit., p. 143.

have—assigning to those who are already most favoured by nature.”\* If the labour theory is to be applied strictly, the young, the aged, the sick, and the incapacitated will have no claim to justice, but only to charity.

- (3) Willoughby is right when he claims that the labour theory disregards individual capacities for enjoyment, as well as intensity of individual needs.
- (4) Even if the advocates of the labour theory are willing to modify their position to the extent that labour is not the sole producer of wealth, but that it should be rewarded in strict proportion to the part played by it in the creation of wealth, the practical difficulties involved in such measurement are so many and varied that the theory, even in its modified form, becomes useless.

**4. The Individualistic Theory.** This is the most dominant theory in our modern world. It is known by various names: ‘individualism’, ‘capitalism’, ‘industrialism’, and ‘commercialism.’ According to it, remuneration is to be determined by the higgling of the market. Its watchwords are supply and demand and competition. It has been tried for a long time, and the results are not particularly encouraging. A chief advocate of this theory, Prof. T. N. Carver, reduces it to the mechanical formula,  $V = P - C$ , where  $V$  is a person’s value or worth ;  $P$ , what he produces ; &  $C$ , what he consumes. Theorists of this type sometimes recognise that a thorough-going *laissez faire* policy leads to anything but justice, and, therefore, try to modify and limit their individualism by means of governmental restrictions. In particular, they advocate universal education, technical education for all who can benefit by it, graduated inheritance tax, and other measures which will tend to give equality of opportunity, as far as that

is obtainable. They further seek to limit the workings of the *laissez faire* principle by placing restrictions on monopoly, competition, enormous incomes, unearned increment, &c. But in doing all this they pass from the individualistic ideal to the socialistic ideal without acknowledging the charge.

The principal objections to which the individualistic theory of property and of distributive justice are open are these :—

- (1) It has long been recognised that economic value, as fixed by competition, is essentially relative, and not absolute. To abolish competition and to give the State power to fix the amount of one commodity which shall be exchanged for another might be worse. But that does not make the economic theory of value a canon of ideal justice. The price that a person gets to-day for his services does not exactly measure his value. Many other circumstances enter into the case and upset the balance. A person may be as industrious to-day as he was yesterday, and yet his wages may be less than half, simply because of an unforeseen decrease in the demand for his services.
- (2) Serious inequality in rewards arises also from monopoly, combination, unearned increment in the value of land, capital, and interest. As mentioned above, the State can do a great deal to regulate these things, but it cannot completely solve the problem. In the case of monopoly, the State can only prevent express and open combination or take over into its own hands a business that would otherwise fall into the hands of private monopolists. In the latter case, we must carefully consider the balance of evil between political jobbery and private monopoly.

(3) Some advanced individualists speak of effort as the determiner of reward. It is obvious that we cannot give a precise meaning to the term 'effort.' If we mean by it the amount of energy expended or the difficulties experienced, it is clear that these are factors which carry with them an incalculable element. If we mean by it the time employed, it is obviously unjust, for it is not fair "to reward labour in proportion to the effort which it involves, without reference to the value of the objects which are produced by it."\* To interpret effort to mean 'results obtained' is to expose our theory to all the objections to which the labour theory is open.

Moreover, if reward is to be according to effort, it should be according to voluntary effort. But voluntary effort is not easy to measure.

Finally, effort "must serve rather as the basis for a rule of obligation upon the agent himself than as a principle of desert to be applied by the distributing power. Every individual is under a moral obligation to employ his talents to their fullest extent for the benefit of humanity. This being so, no reward is needed or indeed demandable; for the performance of a duty cannot furnish a claim for recompense."† Apropos of this, Rashdall contends that "the fitting reward of the good man is the opportunity for the freest and most fruitful exercise of his highest capacities."

(4) The law of supply and demand would no doubt furnish a true index to income if there were an equal opportunity for everybody, but it is a patent

\* J. S. Mackenzie: *Introduction to Social Philosophy*, p. 297.

† W. W. Willoughby: *Social Justice*, p. 197.

fact that there is very little of such opportunity in modern society.

(5) Among the various arguments advanced against the individualistic theory by Laski, the principal one is that it is morally inadequate. Laski observes that it means poor health, undeveloped intelligence, miserable homes, and work in which the majority can find no source of human interest. Undue advantage is taken of weakness. The bargaining capacity of the labourer not being the same as that of the capitalist, the labourer often loses out in the economic race. "The higgling of the market is the apotheosis of inequality."\* Supply and demand does not in any way indicate a social value in the reward secured. Great fortunes are made in advertising enterprise, in slum houses, and the like. The higgling of the market, so far from being a measure of social value, is likely to destroy all social value.

(6) The extreme individualistic position that each man should be left free to acquire all that he can in the open market and do what he pleases with his acquisition does not accord with the idea of social control which is gaining ascendancy every day, nor with the organic conception of society. Laski opines that a state which holds the lives of its citizens at its disposal is entitled in a far higher degree to hold their property at its disposal also. In other words, if conscription of men for war is justifiable, why not conscription of property for the sake of social justice?

In spite of all these criticisms, we must admit that the individualistic theory has in it elements of vitality. In all

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\* H. J. Laski: A Grammar of Politics, p. 191.

ordinary cases there seems to be no other practical way of rewarding a man than that of letting him gain what he can in a fair and open market. It seems eminently fit that, within limits, goodness should lead to happiness, and badness to misery. It is of course true that the supreme reward of virtue is the opportunity to practise it unmolested. But inasmuch as our material and moral lives are closely related and inasmuch as our aim of making people realise the good life is often aided by external goods, there should not be much objection to the establishing of a rough correlation between merit and reward.

The individualistic theory has the further advantage that perhaps, under any other system of distribution, there would be "increased idleness, decreased saving, lessened efficiency of capital, pressure of population, checked growth of culture, etc."

### 5. The Socialistic Theory.

Socialism in general is not opposed to private property, but is opposed to private capital. Unlike communism, it believes in rewarding the labourer in proportion to the *value* of his labour, and here it is in agreement with the individualistic theories of distribution. But it differs from the latter theories in the meaning it attaches to the word 'worth' or 'desert.' To the strict followers of Karl Marx, labour alone has worth since it alone, according to them, produces wealth, while land, capital, and talent have no worth because, in their judgment, they are not agents of production. It is generally conceded to-day, even by many socialists, that labour is not the only instrument of production. "The capitalists can do nothing without labourers, nor the labourers without capital." (J. S. Mill.) Socialists who do not believe in the labour theory of Karl Marx generally mean 'merit' or 'socially useful labour' as determined by government officials when they use such terms as 'worth' and 'desert', while to individualistic thinkers, the same terms mean 'result' or 'value determined by the law of demand and supply.'

The following are some of the principal objections to which the socialistic theory of property are open :—

- (1) The socialists distinguish between the appropriation of the means of production and the appropriation of the fruits of labour. While this is a very valuable distinction, it is not easy to apply in practice.
- (2) Socialism believes in reward according to desert in the sense of socially useful labour performed. Difficulty arises in answering the legitimate question, who is to measure desert? If we answer it by saying that a group of enlightened and competent officials would be the judges, we pave the way for authoritarianism and all the evils attendant on it. Even if we can bring ourselves to a recognition of the possibility of obtaining an impartial set of judges, the difficulty of discovering a standard of merit will still remain. When the law of demand and supply is abolished or at least so seriously curtailed as not to operate the way in which it now does—as will be the case under socialism—the only way of deciding merit would be to compare the amounts of work performed by different labourers, and this comparison cannot be on the basis of time if it is to be just. If it is to be according to the difficulty or disagreeableness of the task, it will mean recourse to the much-despised law of demand and supply. Instead of asking the socialistic question, what a service was intrinsically worth, we should be asking the individualistic questions, what reward could procure the service and whether the rest of society would be gainers or losers in offering that reward. If the standard of merit is to be according to the higher or lower nature of

the work performed, we should lay ourselves open to the following criticisms:—

- (a) Is not the opportunity to do higher work a reward in itself? Should higher faculty receive higher remuneration, simply because it is higher?
- (b) If everybody should wish to become a painter or poet or scholar, would society be able to reward them all alike? Who would be ordered to win bread for the community?

These practical difficulties perhaps are not necessarily insuperable. The Fourierist solution of every member of the community being “attached to several groups, employing themselves in various kinds of occupation, some bodily, some mental, and ... capable of occupying a high place in some one or more” might prove practicable.

(3) Socialism, like communism, commits the folly of imagining that the good life is something ready-made which the State can hand over to the individual. But, according to any sound view, the good life is largely self-earned, although the State can and should provide conditions conducive to the good life, taking care, of course, not to do violence to individual initiative and personal development.

(4) Socialism, like communism, would probably lead to a decrease in the proportion of the aggregate income of the community and an undue multiplication of mankind. A higher life might necessitate a society of comparatively rich and leisured persons. Rashdall's contention that in the long run the diffusion of some culture among the many is only obtainable by the maintenance of a much higher life among the few may have an element of truth in it.

In spite of these criticisms, we have no hesitation in

agreeing with Sidgwick that advance in the direction of the socialistic ideal by a *judicious* and *gradual* extension of governmental functions is not opposed to sound economic theory. It is quite possible that a considerable extension of the industrial functions of government might on the whole be advantageous, without any Utopian degree of moral or political improvement in human society.

Whether socialism has rendered any positive service to the cause of distributive justice or not, its negative value cannot be questioned. In its attack on modern capitalism, it has exposed some of the outstanding and, perhaps, inevitable defects of this system. In particular, it has shown that

(a) Reward of the individual's service in the present competitive society "does not tend to correspond to his share of the *total* utility of the kind of services he renders: what it tends to measure is merely its *final* utility—what the community would lose by the subtraction of a single individual's services." (Sidgwick).

(b) The high remuneration paid for management is not due to the mere possession of any special fitness or ability, but is due to the addition of possessing capital. In the words of Sidgwick, "The amount of the employer's extra gains is due not to the scarcity of possible employers personally qualified and willing to perform equally productive work, but to the scarcity of persons who being thus qualified and willing are able to obtain capital."

(c) "A very small reward is quite sufficient to call forth men's utmost energies when no other is obtainable. After a certain point small incomes stimulate activity as much as larger ones when no larger ones are to be had." (Rashdall.) Rewards need not necessarily be material. "Even in the existing state of society rewards for which men

work are very largely honorary—rewards which take the form of social consideration or of interesting employment for their higher faculties.” (Rashdall.)

- (d) There are many kinds of valuable services for which there is no market value in our existing competitive society.
- (c) A more equal distribution is, in a broad and general way, productive of an increase of happiness and is thus an aid to the good life of the community.

## 6. The Communistic Theory.

On its economic side, communism attacks the institution of private property. It not only seeks to nationalise the means of production and of distribution; but also to bring consumption under State control. It is a radical attempt to confine property to use. Certain schools of communists demand absolute equality in distribution. Others favour distribution according to need; their formula is “From each according to his ability and to each according to his need.” All communists believe in the human right to sustenance, irrespective of services rendered.

There is no doubt a *prima facie* justice in a social order in which members of the group can live together as members of a family, with no material good which they can claim as exclusively their own. Even in an age saturated with materialism such as ours one finds men and women willing to accept this order as their practical standard. Nevertheless, it must be admitted that the difficulties raised by Communism are of too serious a nature to consider it a workable proposition. Communism would be the only just and reasonable social order in a community which was besieged by enemies from all sides or in a society temporarily cut off from the foreign supplies on which it depended for its existence. It would perhaps be just and reasonable also in a society which

had reached its highest possible well-being. But we know of no such societies to-day.

Communism fails to give a sound social order. It is based upon wrong premises. The moment communism admits family life into its order—and that is the only communism worthy of respectful consideration—, its foundation is shaken, for family life means preferences, and preferences mean the undoing of the *esprit de corps* of a communistic order. No true mother can help showing a preference for her own children, and neglect of this simple fact has in the past led to the disruption of many a communistic society which might otherwise have reached the good life.

Some of the other shortcomings of communism may be briefly mentioned:

(1) Communism does not do justice to the fact that 'good' is something which cannot be distributed by the State. This does not mean, however, that the State cannot distribute 'conditions of good.' It would perhaps be to the well-being of society if the present day glaring inequalities in wealth were abolished, even by force if necessary. But it is well to remember Bosanquet's principle that, as an ethical institution, the State by its very nature is limited to the promotion of the good life by negative means. Its function can be described as a "hindrance of hindrances to the best life." Even if we do not agree with Bosanquet that the promotion of morality by force is an absolute self-contradiction, we cannot gainsay the fact that morality enforced by an outside agent is on a decidedly lower plane than morality which is the result of a person's own inner conflicts and victories.

(2) Communism has no answer to give to the strong probability that equality of distribution will

diminish the good to be distributed. Instead of some people being happier than others, as at present, communism will perhaps mean universal misery, the last stage being worse than the first. In the words of Sidgwick, "Removal of the normal stimulus to labour (bodily and intellectual) and to care which the present individualistic system supplies, would so much reduce the whole produce to be divided, that any advantage derived from greater economy of distribution would be decidedly outweighed— even supposing that no material change took place in population."

Mill, in his *Political Economy*, endeavours to show the possibility of having honest and efficient labour even in a communistic society, but the argument seems to be weak. He makes the huge assumption that under communism every one would probably put forth all the energy that he has for the public good. His contention that in the present individualistic society the labourer is required to do just the customary amount, while true, overlooks the fact that, through additional rewards and prospect of advancement, a well-ordered industrial institution to-day is able to utilise every ounce of energy that the labourer is willing to spare.

Mill's assumption that public opinion in a communistic order of society will be strong enough to check the thoughtless intemperance of an undue multiplication of mankind can be true only with regard to a highly advanced society and cannot apply to those sections of modern societies which breed most and yet are least amenable to public opinion.

(3) Communism, as well as socialism, is open to the charge of making room for authoritarianism. One of the first difficulties that communism has to meet is the difficulty of fairly apportioning the labour of the community among its members. The usual answer given by communism to this

difficulty is that all should be made to work at every description of useful work. But as Mill says, "all persons are not equally fit for all labour; and the same quantity of labour is an unequal burden on the weak and the strong." Nowhere in society, except in a crude and barbarous state, backed up by supernatural fears, can it be just to have a group of despotic officials who would assign men to their work and reward them according to their own sole pleasure and judgment. To quote Mill again, "The chief criticism of communism and socialism is whether there would be any asylum left for individuality of character, whether public opinion would not be a tyrannical yoke."

- (4) Once more, communism calls for a cataclysmic change, *i. e.*, for a sudden reconstruction of society, resulting in a serious dislocation of the present economic and social order. Such violent change is not just, for justice, in one of its phases, should be taken to mean the fulfilment of "expectations arising naturally out of the established order of society."\* In such a case as land ownership, even if it were possible to prove that nationalisation is the only just solution, it would be anything but just to appropriate the land of individual owners without adequately compensating them for the loss.
- (5) Finally, the communist maxim "From each according to his ability and to each according to his need" is more a moral injunction than a canon of legal justice. From the point of view of individual obligation, the formula is a perfectly

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\* H. Sidgwick: *Methods of Ethics*, Book III, Ch. V.

sound one. No one can fulfil his highest moral obligations to society if he does not produce according to his ability and consume according to his needs. But to make it a matter of public regulation and control, instead of a matter for the individual conscience as at present, is impracticable.

An obvious difficulty which confronts us at the very outset is in comparing the relative needs of different individuals. There is no way in which a legal authority can measure individual needs and idiosyncrasies. Therefore, for purposes of distribution by the State, needs can only mean average or equal needs. But since all are not equally hard-working and equally conscientious and since real needs vary from individual to individual, it seems unjust to reward all alike.

Even more difficult than the determination of relative needs is the determination of relative ability. A recent writer remarks that physiological psychology has not yet discovered the method whereby the quality and capacity of a man can be tested, measured, and quantitatively expressed. Until that is done the only recourse left is to depend upon the individual himself to demonstrate his own ability.

In view of these and other difficulties, the individualist holds that the two parts of the communist formula do not hold together. He argues that if we are to get from every man the maximum service that he is capable of rendering, the way to get it is not by rewarding him according to his barest needs. Again he contends, if reward is to be on the basis of one's needs, the least capable and the most insufficient who are incapable of realising the good life would probably make the greatest demand on the goods of the community.

Whatever be the theoretical and practical defects of communism as a social system, the idea of equality which the theory embodies is too precious to be slightly rejected.

That all should start on exactly equal terms is certainly inconsistent with any theory of justice, but in the treatment of individuals justice demands that, other things being equal, there should be absolute impartiality—what Rashdall calls an equality of consideration. In the absence of any special reason for inequality, equality is the only right rule for distributive justice.

### 7. The Idealistic Theory.

As seen already, the idealist supports private property on the basis of personality. His argument is that for the development of character which is man's highest end man requires individual liberty and that individual liberty necessitates opportunity for the acquiring of property. The right to free life should be accompanied by the right to property, for property is the material means on which the right to free life can express itself and receive a concrete embodiment. Property is thus an instrument of personality. It renders the invisible self of man visible. The way in which a man earns his property and the way in which he spends it are eloquent testimonies to the kind of person that dwells within. Property expresses character. It is an act of the will. Without it man cannot realise the higher life possible for him. It is a condition of the good life. There is no want of human life so essentially spiritual that it does not need matter. Property enables a man to give expression to his ideals, his inventiveness, and his originality.

All this does not mean a wholesale justification of the present capitalistic system. Personality is not isolated and self-contained. It can exist only in fellowship. In its fundamental being, personality is a social thing. Therefore, a legitimate development of personality involves a legitimate development of fellowship. Applied to property, this teaching means that nobody can claim an absolute right to his possessions. Property is a trust or stewardship. It is relative to the common weal. Since all men have a right to

develop a worthy human life, all should have in reasonable measure enough "property for use."

The chief merit of this theory is that it raises the problem of acquisition and distribution from the plane of economics to the plane of the value of persons. Its chief defect is that it is incapable of giving a definite rule of guidance for State control and regulation of property.

#### **Distribution according to Power to Use.**

Reducing the idealistic theory of property to practical terms, Prof. Hocking advocates the distribution of economic goods according to a person's ability to use. This canon of distribution embodies the well-known principle of "tools to him who can use them." We give books to a student, a telescope to an astronomer, and a work of art to one who has an appreciation for art. In the same way property should be given to those who can make the maximum use of it. It is probably true that people do not object to wealth as such, but to the abuse of wealth. The conspicuous waste and luxury of the foolish rich have done more to discredit the institution of private property than almost any other factor.

The power to use Prof. Hocking interprets to mean—

- (1) Distribution according to need in the case of those at the bottom of the economic ladder on the assumption that all require a minimum for food, clothing, shelter, health, and education;
- (2) Distribution according to earning capacity as determined by the law of demand and supply in the case of those occupying the middle ranges of income; and
- (3) Distribution according to ability to use in the case of those at the top of the economic ladder. Hocking argues that the man of rare talent has power to use a greater number of things than ordinary persons and that he who can serve well can use well.

Power to use, he further says, does not mean power to absolute use but only power to proportionate use. It is an advantage to every one to have somewhat less than his power to use; for only in such a case can a person choose that which he considers will be most conducive to the development of his personality.

The formula of distribution under consideration has a great deal to commend it. In the first place, it will stimulate each individual to make himself as useful as possible to himself and to the community. In the second place, it will furnish ample opportunity for each individual to utilise whatever altruism he may have in his nature. Thirdly, it will mean the gradual elimination of the unfit members of society and the survival in large numbers of the useful members. Lastly, it will mean fulfilment of the truth that talent should not go unrewarded.

In spite of these theoretical merits, we must confess that it is difficult to see how it can be carried out in practice. While in many ways it is an improvement on unqualified individualism, the changes proposed by it are not radical enough. Besides, it will probably result in undue inequality between men of great capacity and industry on the one hand and those who are incapable on the other. For it is not easy to measure a person's worth or usefulness to society.

#### **Constructive Statement on a Just Remuneration.**

Nevertheless, with the aid of this canon of justice it is possible to draw up a programme of distributive justice which can be made applicable to our present-day society. At the bottom of the scale we might place the idiots, imbeciles, and morons and others who from the eugenic point of view are undesirables, segregate them from the rest of the community, and make it impossible for them to propagate their kind. As long as life lasts we should treat them respectfully and provide them with the minimum conditions of civilised existence. In the second group we might place all the dependents among

the aged, the diseased, and the infirm. To them also we should give the minimum conditions of civilised existence. The unskilled we might place in a class of their own and grant them a minimum wage necessary for decent living, constantly endeavouring, however, to promote them to the ranks of the skilled. As far as the middle classes are concerned, we should let the economic law of demand and supply operate, taking particular care at the same time to correct and limit the inherent short-comings of that law by applying the principle of equal opportunity. We should enforce free education, the progressive income tax, and the graduated inheritance tax, and we should remove all unjust privileges. When we come to deal with those at the top of the economic scale, the canon that we should rigidly apply is a person's 'ability to use.' If a Carnegie or a Ford is able to use his wealth in the production of greater wealth in the service of mankind, we should let him have it. If, on the other hand, he uses it for utterly selfish ends, or abuses it in other ways, we should either by means of law or public opinion or both make it impossible for him to hold it.

In enforcing the above practical programme of distribution, we would lay special stress upon the following points:

- (1) There should be a rigidly enforced minimum wage law in every progressive society. This minimum should be such as to keep the individual in physical and mental health and efficiency. This is what Laski calls a civic minimum.
- (2) Our social policy should be so directed that the unemployed will also be the unemployable. No one who has the ability to work should be obliged to remain idle.
- (3) Equal opportunity should be provided for all, so that all may start the race of life alike, as far as that is possible.
- (4) There should be a judicious and gradual nationalisa-

tion of such means of production as are liable to be abused by private owners. Experience is the best guide in a matter like this.

- (5) Public opinion should be so educated that able and ambitious people will look more and more to non material rewards for higher services rather than to material rewards.
- (6) No one should receive a reward which he has not earned by his personal effort and by performing some socially useful service.
- (7) There should be no superfluity for anybody till the minimum needs of all are satisfied. The present unjustifiable gulf in rewards should be narrowly limited. Differences there may be according to ability or capacity to use. But these should not be such as to make any one a parasite. Plato's idea in *The Laws* that no one should be more than five times as rich as any of his neighbours is not as foolish as it sounds.
- (8) If capital is still to be in private hands, the interest allowed on it should be restricted by law.
- (9) Nobody should be allowed to control wealth after his death. Children should no doubt be provided for till such time as the state may determine. The widow has no moral right to anything more than an adequate annuity. Whatever a man leaves above this level should revert to the community.

### **8. Laski's views on Property.**

Laski is convinced that the individualist theory stands in need of revision. He argues that all property depends upon the sustenance of society and that its rights are therefore socially created. Justice, he holds, requires that everybody should have a minimum—a minimum necessary for civic efficiency—and that he should produce the amount required for his maintenance. No man has a moral right to property

except as a return for functions performed. That alone is morally his which he gains by his personal effort.

Hereditary wealth should be seriously curtailed, for it involves two things:

- (1) There is a class freed from the legal obligation to labour.
- (2) So freed, it is able to utilise its leisure in a way that taxes the productive effort of the remaining members of society. Such leisure is almost always misused.

Laski is not opposed to provision for one's immediate descendants. But he is opposed to their receiving such support as enables them to avoid altogether the battle of life. He justifies inheritance when it means the provision of an income for widowhood, on the one hand, and the education of children on the other. But when the retention of property goes beyond these needs, he claims that there is no moral justification for it.

Property is legitimate in those intimate, personal things of which the value is, in the main, a value of sentiment. Nobody, for instance, would want to deprive a son of his father's pipe, books, and pictures. But when inheritance takes the form of great wealth, it becomes a totally different question.

So far as organisation permits, men should have an equal start in the race. So far as legislation could effect it, wealth, where it came, should be based upon functions alone. There should be paid to all a reward that enables them to give of their best and to be, so far as they knew, the best that they desire. Differences in reward should be built either upon effort or ability. But the difference should never permit the accumulation of reward so as to benefit other men. No one should be paid save for personal achievement. No one should earn save by the contribution he makes to the *social good*. And since each aspect of social life would lie open to him who

would take advantage of it, we should at least abolish that hereditary poverty that is the main feature of the present order. The reward which each citizen earns must be his own to do with as he will. Distributive justice requires

- (a) that all alike are entitled to find the means of full life, and that
- (b) beyond those means differences must be required for the common good of society. Ideally, no doubt, men should give of their best to their fellows for the sheer joy of giving.

A just reward alone is not enough. We need a just industrial organisation too. Industry must be made a profession. It needs to be informed with the principle of public service. There should be standard hours and standard rates of pay.

Secrecy in matters like costs of production and rates of profit should be done away with. The claim of the businessman to manage his own enterprise in his own way is unjustifiable. Industry should be changed from an instrument of *gain* into an instrument of *service*.

The time will probably come when we shall have to buy their property rights from existing owners. Such payments should not be allowed to pass on to their descendants. An annuity terminable at death will probably meet the ends of justice.

## 6. Particular Rights of Property.

(1) *The rights of gift, bequest, and inheritance.* The right of property implies the right of gift. But both these rights are subject to the interests of society. At first sight, we tend to say that bequest is on the same level as gift and alienation. We may argue that if a person is free to give away his property when he is alive, why should he not leave it just as he likes at his death? As a matter of fact, however, bequest is limited by law in most States. Even in his own life time a person has to support his wife and family, and he cannot

make an absolute claim to his property. No one has the unqualified right to bequeath his property the way he likes. The two guiding principles which the State should employ as regards bequest are the interests of the family and the interests of the public. The same principles apply to inheritance, too. Green is right when he says "Freedom of bequest must not mean freedom to limit that freedom in a subsequent generation, *i. e.*, it must not imply the right of entail."

(2) *The right of contract.* Just as the rights of property are an extension of the right of life and liberty, so in modern society in which people have to make bargains for future benefits or services, the rights of property cannot be fully enjoyed without the additional rights of contract. A contract is an agreement for the exchange of services or property of some kind into which the element of future performance enters. It is for the mutual benefit of those who enter into it.

The conditions which make a contract valid are four in number :

- (1) The contracting parties must be in full possession of their reason. This rules out insane persons, persons under the influence of drink, and minors.
- (2) There must be no coercion or undue influence. Coercion, whether actual or threatened, nullifies a contract.
- (3) There must be no sort of misrepresentation or fraud. To avoid fraud some contracts must be written.
- (4) No contract may be against what is called public policy. If a contract is against public policy the State will not enforce it. The enforcement of some contracts, *e. g.*, contracts in trade, is a matter of expediency. In interfering with the freedom of contract, the State must consider not only the freedom of those who are interfered with, but also those whose freedom is increased

as a result of such interference. This is especially important in modern industrial society, where the bargaining capacities of the employer and of the labourer are not equal.

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## CHAPTER XI

### THE PROPER SPHERE OF STATE ACTION.

#### 1. History of the Question.

From a discussion of questions relating to the rights of man, it is a natural transition to proceed to consider the proper sphere of State action. This question was not of such primary importance in the early days of political speculation as in modern times. In the Greek period there was no conscious antagonism between individual interest and State interest. The typical attitude of the Greek towards his State was "She is ours and we are hers." There were occasional instances of conflict between the individual and the State, as in the case of Socrates. But the prevailing belief was that the State might properly embrace everything which had to do with the life and the highest development of the individual. The end of the individual was regarded as part and parcel of the end of the State.

Neither in the Roman times nor in the unsettled conditions which followed was the question of the proper sphere of State action of first-rate importance among political thinkers. The medieval period was characterised by a long and bitter struggle between Church and State for ultimate authority; and the question of individual liberty was not a burning problem. While for a considerable time victory was on the whole on the side of the Church, final victory went to the new nation-States which were coming into existence at the close of the medieval period. In dealing a death-blow to the fissiparous tendencies of feudalism, the monarchs of these new nation-

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States strengthened their position and soon established absolute rule over their subjects. Just at this time, as good fortune would have it, the Protestant Reformation appeared on the scene, bringing in its train the doctrine of the divine right of kings, still further strengthening royal absolutism. From this time on there came into being a sharp antagonism between the interests of the rulers and of the ruled. The Tudor reign in England, however benevolent, was despotic in its character. The Stuarts fought for the principle of the divine right of kings, and one of them even laid down his life for it. The theory was propounded by such royalists as Hobbes that "no law can be unjust." The limits of State action were determined by the limits of the power of the king. But this state of affairs could not last long. A struggle ensued on behalf of the rights of the people, and in the course of this struggle the theory of natural law and of natural rights played a great part.

John Locke in the seventeenth century was the philosopher of this movement. He developed the theory that men originally lived in a state of nature endowed with certain inherent and inalienable rights and that when they abandoned that state and established a government by means of a contract it was only for limited purposes, *viz.*, the protection of life, liberty, and property. Government, therefore, he claimed, had no right to be absolute, but was limited by the nature of man and the specific purposes for which it was instituted. The natural rights regarding which Locke theorised, Blackstone declared to belong to all Englishmen. These rights, it was believed, could not be taken away by any form of government or by any act of government. The limits of State action thus came to be determined by what were known as the natural and inherent rights of man. This theory of natural law and natural rights was almost universally accepted in the eighteenth century and furnished a philosophical background for the *laissez faire* theory of the nineteenth century, which

in some form or another has come down to modern times. At present there is not the same aversion to State action as there was in the eighteenth century and the first half of the nineteenth. The attitude of mind expressed by Spencer's phrase "*Man versus the State*" is practically dead and is being replaced by the idea of "*group versus the State*."

## 2. Individualism.

*Origin.* The individualistic theory, also known as the *laissez faire* (or let alone) theory, has played a very important part in the economic and political life of the western world. In modern times it arose as a natural reaction to the mischievous and meddlesome interference which characterised the relation of the State to the individual prior to the eighteenth century. There were, for instance, petty laws relating to the type of food that people should eat on certain days and the kind of cloth in which the dead should be buried. There was also undue restriction on the freedom of trade. With the coming of the industrial revolution in the eighteenth century there was bound to be a reaction against all these forms of State action. There were new inventions, revolutionising the economic life of the people. Goods were being produced on a gigantic scale and new markets were being won where these goods could be sold. Under these circumstances, it was natural for men of industry, enterprise, and originality to claim the right to be left alone as far as possible so that they could utilise their powers to the maximum advantage.

*Statement.* In the light of this background, it is not surprising to find that individualism believes that the State is an evil, but an evil necessitated by the selfishness and rapacity of man. It assumes that but for the restraining power of the State, there would be no social peace and order. The State should, therefore, give its undivided thought and attention to the protection of the individual, but the promotion of his welfare falls outside its scope. Its main business is the suppression of violence and fraud. The guiding principle

of the individualist is maximum possible individual freedom and minimum possible State action. The State, he holds, is within its bounds when it seeks to interfere with the liberty of the individual in the interest of its own protection. But it has no right to interfere when the good of the individual and his good alone is in question. In the words of J. S. Mill "Over himself, over his own body and mind, the individual is sovereign."

Individualists are not all agreed on what constitute the legitimate functions of the State. Extreme individualists such as Spencer limit the sphere of State action to

- (a) the protection of the individual against external enemies;
- (b) the protection of the individual against internal enemies; and
- (c) the enforcement of contracts lawfully made.

Individualists of a moderate type are prepared to go much further. The functions of the State, as conceived by them, are neatly summed up by Gilchrist as follows : -

1. Protection of the State and individuals from foreign aggression.
2. Protection of individuals against each other, that is, from physical injury, slander, personal restraint.
3. Protection of property from robbery or damage.
4. Protection of individuals against false contracts or breach of contract.
5. Protection of the unfit.
6. Protection of individuals against preventable evils such as plague or malaria."\*

*Arguments.* The individualists support their position from three different points of view: the ethical, the economic, and the scientific.

**(1) The Ethical Argument.**— It is admitted that freedom of action is essential to the development of character. Without

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\* R. N. Gilchrist: *Principles of Political Science*, pp. 397-8.

such freedom the individual becomes a mere automaton. What gives joy and meaning to life is liberty to mould one's life according to one's ideals. The highest development of the individual is possible only when there is opportunity for self-reliance. When the individual is thrown upon his own resources, a powerful incentive is provided for the exercise of his powers of initiative, enterprise, and originality. If he possesses any intrinsic worth, it has an opportunity to manifest itself.

Government action is perfectly legitimate up to a certain point. But if it exceeds that limit, it cramps the individual. Over-government kills his sense of initiative and substitutes reliance on government for self-reliance. It creates a pauper mentality, for the individual is tempted to be lazy and indolent and expects others to do for him what he should do for himself. He receives no stimulus for the development of his talents, and the consequence is that both the individual and society at large are losers. Over-government not only destroys powers of self-help, but also tends to reduce society to a dead level. People are moulded after a single pattern, and a premium is placed on the "standardised individual". Non-conformity is considered a serious offence. Society becomes static and every innovation is viewed with grave suspicion. In order, therefore, that the individual may develop his powers to the maximum possible, it is argued that governmental action should be narrowly limited. Government should not attempt anything more than to enforce contracts, to keep the peace, and to punish crime.

**(2) The Economic Argument.**—From the point of view of the economic life of man, individualism assumes that every man is self-seeking and that he knows his interests best. Therefore, the argument runs, if every person is left to himself he will make the best use of his opportunities, benefiting himself directly and society indirectly. Thus if the capitalist is left alone, he will look around to see where he can invest

his capital to the best advantage possible and invest it there. Likewise, the labourer will look around to see where he can get the most advantageous terms possible for his services and offer his services there. Free competition and unrestricted operation of the law of demand and supply are thus in the economic interests of society at large. Prices, wages, rent, and interest should all be unfettered so that they can adjust themselves to the prevailing economic conditions. Similarly foreign trade should be left free. Artificial aids such as high tariffs and bounties to infant industries should be discouraged. Beyond providing that the market is kept free and open and that fraud and treachery are not practised on one another by the members of society, the State has little to do in the economic field.

**(3) The Scientific Argument.**—It is based on the biological law of the struggle for existence and survival of the fittest. Herbert Spencer is a chief exponent of this argument. He holds that the law by virtue of which life has evolved in the case of the lower animals and the sub-human species is this law of the struggle for existence and survival of the fittest and argues that the same law should be allowed to operate in the case of man, too, if we are to evolve a race of strong, able, and virile human beings. The natural course of progress means that the poor, the weak, and the inefficient must go to the wall. Although such a course means injustice for some individuals, the interests of society demand it. In Spencer's own words, "Pervading all nature we may see at work a stern discipline, which is a little cruel that it may be very kind. That state of universal warfare maintained throughout the lower creation, to the great perplexity of many worthy people, is at bottom the most merciful provision which the circumstances admit."\* The conclusion of the matter, according to Spencer, is that by leaving individuals to them-

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\* H. Spencer: *Social Statics*, p. 322.

selves the strong and fit will survive and the unfit will be eliminated. This means that the State should only undertake functions which are "negatively regulative." To undertake positive measures such as the enforcement of sanitary legislation, the provision of public education, public parks, public libraries, and poor relief, the management of post offices, and the issue of currency, is to interfere with the wise provision of nature.

To these theoretical arguments—the ethical, the economic, and the scientific—certain practical difficulties are added by the adherents of individualism.

- (1) It is argued that when the government attempts to do many things, it does them badly. It means red tape and routine, resulting in unnecessary delay and much waste. A great deal of necessary work is left undone. Experience shows that governmental interference produces bad results in many cases. As contrasted with private management, government management produces numerous failures. It lays the door open to jobbery and corruption. Governments make and unmake laws. This shows, says Spencer, that many of these laws should never have been enacted.
- (2) The administration of laws is not seldom irksome to the people, either on account of the natural aversion of man to official interference or on account of the nature of the law.

*Criticism.* Individualism contains an important truth. But it grossly exaggerates it. It over-emphasises one aspect of social life at the expense of others. In reacting against petty laws and meddlesome legislation it goes to the other extreme. The arguments sketched above in its favour are decidedly one-sided and, to some extent, even false.

- (1) It will be readily conceded to the individualist that self-help is the best kind of help and that governmental policy should be so framed as to enable each individual to stand on his own feet. This does not mean, however, that the State should merely provide protection and repress crime. Complex modern civilisation makes it difficult, if not impossible, for the individual to develop all his powers harmoniously. There are many situations in the life of to-day which the individual himself cannot control and for which he requires the action of the State. Without extended State action, there seems no hope for the vast majority to develop themselves fully. Unadulterated individualism, instead of producing individualities, produces nonentities.
- (2) The basis of individualism is unsound. It assumes that man is fundamentally selfish. It bases itself on the hedonistic theory which has long since been exploded. Man possesses not only self-regarding impulses but also other-regarding impulses. Egoism and altruism are present in every man in varying degrees. Therefore, to build an entire theory of State action on a single aspect of human nature is not proper. Individual welfare and social welfare are not opposed to each other. They are dependent upon one another.
- (3) Individualism assumes that every man knows his own interests best. Experience shows that this is not true in a large number of cases. The individual may know his present interests, but there is no assurance that he knows his future interests, too. Further, even if the individual is the best judge of his interests, it does not follow that he is necessarily the best judge of the means to such

interests. As Garner observes, there are in every country ignorant people who cannot take precautions against dangers of which they are unaware. Sometimes the State is a better judge of a man's intellectual, moral, or physical needs than is he himself, as, for instance, in matters relating to public health and sanitation. General well-being can be protected only when insanitary conditions are removed by the State, the quality of the food offered for sale is supervised by it, and dishonest traders and quacks are punished by it. It is the duty of society to guard individuals against their own ignorance and moral crookedness. Even such an ardent champion of individual liberty as J. S. Mill admitted that society should protect a man against himself when he tries to cross an unsafe bridge or contracts himself into slavery.

- (4) The individualist argument is that if each man is allowed to pursue his own interest, everybody will be happy and society will become prosperous. This will be true if the interests of men run parallel to each other and there is no contradiction between them. But experience shows that they are often at cross purposes with each other. We, therefore, require the might of the State to adjudicate differences and to see that no undue advantage is taken of individual weakness.
- (5) The starting point of individualism is "the atomic individual with a fringe of rights."\* Such an individual, it need hardly be said, is only a figment of the imagination. Society is an organism. Therefore, the interests of the individual are not

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\* C. D. Burns: *Political Ideals*, p. 245.

entirely different from those of his fellow-man. The State is not an evil, but a positive good. It is not an artificial creation, but a natural growth. Governmental regulation does not necessarily mean curtailment of individual freedom. Wise restrictions on the individual's impulse to do what he pleases enlarge and secure the rights of all, as in the case of a policeman who directs the traffic. The State is not hostile to liberty and all restraint is not an evil. "The State emancipates and promotes as well as restrains."\* Collective wants of society can only be satisfied through collective action.

(6) The individualist places implicit faith in the law of demand and supply and free competition. It has been pointed out earlier that the law of demand and supply is not as scientific as it is made out to be. Often it is freakish. As for free competition, there is very little of it in practice. It leads to monopolies, trusts, and combinations, the opposites of free competition. The need for a policy of non intervention in industrial matters is not even half as great to-day as it was at the time of the Industrial Revolution. Conditions are very different. New cities have sprung up everywhere. Labour is drawn from the country districts to the cities to work in factories. Large-scale production has taken the place of old home industries. Means of transportation have increased rapidly. The individual is more than ever dependent upon his fellows. Under these changed conditions it is absurd to argue that a policy of non-intervention is the soundest policy possible.

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\* Garner: *Introduction to Political Science*, p. 291.

We need, and do have, "housing laws to prevent over-crowding and pestilence; labour laws to prevent child labour and 'sweating'; factory laws to forbid unguarded machinery and undue danger to life."\*

(7) The scientific argument advanced by Spencer is open to several objections.

- (a) The term '*fittest*' is a relative term. What is fit to-day may not be fit to-morrow and what is fit in one situation is not necessarily fit in another.
- (b) Survival of the *fittest* does not necessarily mean survival of the *best*. All that the law of the survival of the fittest seems to mean is that that which survives deserves to survive. This is clearly absurd. For, "if the sole test of fitness to survive is found in the fact of survival, then the prosperous burglar becomes an object of commendation and the starving artisan a target of contempt."†
- (c) What is true of the lower animals is not necessarily true of man, the noblest of creatures. For, when we arrive at man in the scale of evolution we arrive at a startlingly new stage of development. The lower animals passively allow themselves to be adapted to nature. Man, on the other hand, on account of his superior intelligence, is able actively to adapt nature to his needs. Therefore, it seems logical to conclude that instead of allowing nature blindly to fit a few to survive, man by using his higher intelligence, should fit as many as possible to survive. Man differs from the lower animals

\* R. N. Gilchrist: *Principles of Political Science*, p. 406.

† S. Leacock: *Elements of Political Science*, p. 346.

not only in the matter of intelligence but also as regards conscience and highly developed sympathies. These faculties induce him to condemn cruelty to the unsuccessful in life and the ruthless waste of the physically weak.

- (8) The fact that governments make mistakes is not necessarily a condemnation of all State action. Individualists point with much satisfaction to the many mistakes made by government and its officials. They forget that private agencies, too, commit errors. But their mistakes are not so patent or so well-known to the public. Those of government, on the other hand, are generally known to everybody. Furthermore, if the government commits errors, it also performs many good acts, for most of which it does not receive due praise. As a matter of fact, the public expects the government to function much more efficiently than can do private individuals. Hence the blame attached to the failures of government is proportionately greater.
- (9) As Gilchrist points out, with the advance of democracy the need for individualism is not as great to-day as at an earlier time. Where democracy prevails and where local government is strong and capable, the line between socialism and individualism tends to become less and less clear. The objections of individualists to centralised regulation do not have much force with reference to local regulation. In other words, "municipalisation" is not open to some of the objections to which "nationalisation" is open.
- (10) Some individualists tend to confuse individuality with eccentricity or oddity of character. This is particularly true of Mill, who treats the individual

as a self-centered entity rather than as an intrinsic part of society.

(11) If prevention is better than cure, the State should prevent injury to society as well as cure it. Pure non-intervention in the conduct of government is impossible. Its logical conclusion is anarchism. To use the language of Leacock, it divorces individual and social rights. It overlooks the plain advantages of co-operated and regulated effort.

*Conclusion.* Summing up the case for and against individualism, Gilchrist notes the following points.

- (1) Individualism emphasises self-reliance.
- (2) It combats needless governmental interference.
- (3) It urges the value of the individual in society.
- (4) It has helped to destroy useless laws of petty interference.

“But it exaggerates the evils of state control when it forgets that there are more instances of good state actions than of bad. It gives a fundamentally false conception of individuality, and finally, it has proved quite unsuited for the complexity of modern life.”\*

C. D. Burns sums up the matter in these words: “Individualism involves the neglect of the social causes and social results of action. .... .... (It) suffers from the unconscious metaphor of atoms. (Nevertheless), Individualism as an ideal has a very great future. Its limitations and mistakes of the past are obvious enough, but it has survived them. .... To do full justice to Individualism ... we must separate its soul from the accidental form in which it was first embodied ; and we must see, in a dream of the future, the civilised State, an association of individuals as far more developed than the best of as now as these are better than the primitive barbarians, our ancestors.”†

\* R. N. Gilchrist: *Ibid.* p. 408.

† C. D. Burns: *Ibid.* pp. 249-53.

### 3. Socialism.

The socialist regards the State as a positive good. Therefore, instead of minimum possible State action, he wants the maximum of it. He believes that this is the only way by which social justice can be made possible for the bulk of mankind. He aims at a "Co-operative commonwealth controlling all the means of production and regulating distribution according to some method of joint control." Under socialism the State would manage all industrial enterprises. Everybody would become a government employee. Wages would be based on efficiency, and production "would be controlled by elected officials, who would manage all industry, assign labourers to their duties, and arrange wages and promotions."\*

The merits and demerits of socialism have already been fully dealt with in the last chapter. Therefore, there is no need for us to cover the same ground again. For the sake of completeness, however, we shall mention the salient points here. The chief merits of socialism as a theory of State action are briefly these:—

- (1) It protests against the obvious evils in our present social system and urges the need for a radical change in the system. Money and power are concentrated in the hands of a few, and the labourer does not receive his proper due. Since the bargaining capacity of the labourer is not equal to that of the employee, the working man is often obliged to make a forced agreement. The present system leads to grave inequalities of wealth and opportunity. It is also responsible for enormous waste and the duplication of services. There is no planned economy on a nation-wide scale. Unrestricted competition leads

\* R. G. Gettell: *Introduction to Political Science*, p. 385.

to lower wages, over production, cheap goods, and unemployment. The present system further tends "to beget materialism, unfairness, dishonesty, and a general lowering of the standard of individual character."\*

- (2) Careful planning will avoid duplication, over-production, unnecessary advertisement, and the production of harmful or deleterious goods.
- (3) The socialistic ideal places a much-needed emphasis on altruism and on the cultivation of a desire for social usefulness and for the love of activity for its own sake.
- (4) Socialistic policies have been followed in practice to a certain extent, and the results have been satisfactory on the whole. There is no disposition anywhere to substitute private enterprise for government ownership and control of the postal and telegraph services, coinage, etc.
- (5) "Collective ownership and management, it is maintained, is thoroughly democratic." According to its supporters, socialism is the next step in democracy.

*Criticism:*—There is no gainsaying the fact that many of the evils pointed out by socialism in our present industrial system are true. We may further concede to the socialist that the only remedy for those evils lies in the substitution of a new economic and political system for the present. But all this does not mean that socialism has proved its case. The practical difficulties in making it a living reality are too many to be ignored.

- (1) The difficulties of administration will probably be stupendous under socialism. The post office, telegraph, and telephone systems are no doubt

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\* J. W. Garner: *Introduction to Political Science*, p. 302.

managed with considerable success in most countries. But in the absence of competition, we cannot say that they are run on the most economical lines possible. The Postmaster-General of England in the last Conservative government contended that under private management the postal system of that country could be run much more efficiently. Even if we grant that the few national enterprises of to-day are conducted most economically and efficiently, it does not follow that a whole-scale nationalisation of all industries will have the same admirable result. Critics of socialism say that a multiplication of State activities means the governmental machinery will break down under its own weight. The socialist, it is rightly contended, is over-optimistic in the matter of government management.

- (2) At the present stage of man's moral development, socialism would mean a tremendous increase of opportunities for corruption, intrigue, and personal spite.
- (3) Socialism is not conducive to progress. The incentive to labour will probably be destroyed. The activities of the average man to-day are determined for the most part by the desire for gain—and not by any altruistic motive nor by the desire for social usefulness. The socialistic State is likely to check individual initiative. Life would become uniform and even stagnant. New wants would not be stimulated under a governmental regime.
- (4) The working man is not as powerless as he is sometimes pictured. Through trade unions and other forms of combination he is not infrequently able to strike a bargain advantageous to himself.

(5) Socialism is likely to mean a restriction of individual freedom and a deterioration of individual character. Herbert Spencer believes that "each member of the community as an individual would be a slave of the community as a whole." Socialism would repress individuality. Genius would be stifled and citizens would become lethargic. Individual spontaneity and responsibility would be sapped by bureaucracy and departmentalism would reign supreme.

(6) Production might suffer both in quantity and quality.

#### **Evaluation of the truth in Individualism and Socialism.**

Both Individualism and Socialism contain an important truth. But both grossly exaggerate it. Both of them, further, are theoretical and doctrinaire. Just as pure individualism is an impossibility so is pure socialism. What we need is a system which would somehow preserve our individualities and yet keep society intact as an organic whole. Burns is right when he declares, "If we could imagine an ideal at once individualistic and socialistic, such would be the effective ideal for most thinking men."\* For, to quote the same writer again, "if on the one hand we tend to isolation and selfishness, on the other we tend to lose our individualities in the flood and complexity of 'The Great Society.' ... ... The Individualist is right in aiming at the variety of individuals, and so is the Socialist in impressing on all their common interest; for the fullest development of each is to be found in the performance of his function in the life of the whole."†

Notwithstanding the obvious defects of socialism, it is perhaps the part of wisdom to adopt a policy of judicious and gradual extension of State activities in the direction of the

\* C. D. Burns : Political Ideals, p. 275.

† Ibid.

socialistic ideal, aiming at the same time at the moral elevation of mankind.

**4. Idealism.** Leaving out the extreme forms of idealism as found in Hegel, and confining ourselves to the English idealists, we find there a theory of State action which merits serious consideration. The idealists take an exalted view of the State, regarding it as the embodiment of the best in every man. The State is to them an ethical institution, and in obeying it we obey ourselves. Seeing that the idealists give such a glorified place to the State, one would expect them to assign a very wide range of activities to it. Yet, as a matter of fact, they narrowly limit the sphere of State action. The explanation for this seeming contradiction is not far to seek.

To the idealists, the end of the individual and the end of the State are one and the same, *viz.*, the realisation of the "best life" or the "promotion of the excellence of human souls" (Bosanquet.) This end, however, is of such a personal and inward character that for the most part it can be realised by individual effort alone. Moral good is essentially a self-earned good. A further reason for leaving the individual to earn his own moral life is that the instruments at the disposal of the State—force and compulsion—are of so external a character that they cannot very well promote such an inward grace as moral perfection. In the words of Bosanquet, "the general will (of the State) when it meets us as force, and not as a social suggestion which we spontaneously rise to accept, comes to us *ex hypothesi* as something which claims to be *ourselves*, but which, for the moment, we more or less fail to recognise," with the result that we are abandoned to automatism or stirred to rebellion.

The sphere of State action is, therefore, negative. The State should provide an opportunity for the individual to earn the best life possible for him by removing those obstacles which stand in his way. This means that the function of the State is the 'hindrance of hindrances' to the best life or an

'adjustment of all adjustments.' To undertake more than that would mean a frustration of the moral purpose of the individual. The excellence of human souls, as said already, is a self-earned good. It cannot be given from without. Even if it be possible, no one has the right to give it. The promotion of the good life through hope of reward or fear of punishment is a meaningless expression. As Bosanquet puts it, "to attempt to assign material success in proportion to true merit and social service would be flatly contradictory." Religion and morality are of such a personal and spiritual nature that when the State begins to enforce them or even to promote them, except through very delicate and indirect means, they lose their value. In matters concerning conduct which come under the law, State activity, on account of its negative character, is limited to external acts. Intention may be, and often is, taken into consideration, but only in so far as it affects conduct. The State "can only enforce as much intention as is necessary to insure on the whole compliance with requirements stated in terms of movements affecting the outer world."

Motives fall outside the purview of the State. They concern the inner man, and there is no way by which the State can judge them. From the moral point of view the distinction between motives and intentions cannot be made a hard and fast one. But from the legal point of view, the idealist insists on such a distinction. For example, the State can compel parents to send their children to school. But it cannot go behind the compulsion and enforce any particular motive. A parent may send his child to school out of a high motive or a low one, but as long as the external act is performed the law is satisfied. Intentions, however, are important, because it is the element of intention that makes the act a voluntary one. No one, for instance, will ordinarily be punished for an unintentional or accidental act. Even if he be punished, the penalty will not be severe. The law has to take an external measure of intention. It sets up an external

convention of intentions, thus tending to take an external view of both actions and intentions.

In the language of T. H. Green, "only external actions can be matter of obligation. The ideal of law must be determined by reference to the moral end which it serves. Law *can* only enjoin or forbid certain acts; it cannot enjoin or forbid motives. And the only acts which it ought to enjoin or forbid are those of which the doing or not doing, *from whatever motive*, is necessary to the moral end of society."\*

On the basis of this principle, Green condemns "much legislation which has tended, *e.g.*, to weaken religion, self-respect, or family feeling."† Applying his formula of "removal of obstacles to good life" to the conditions prevalent in England in the latter part of the nineteenth century, Green makes a powerful plea for compulsory education, regulation of liquor traffic, greater control of land ownership, and interference with freedom of contract in cases where the contracting parties are at different levels of bargaining power. Illiteracy and unrestricted sale of liquor are hindrances to the best life. Therefore, the State should remove them by providing for compulsory education and for restrictions on the sale of liquor. Most parents recognise the value of education for their children, so that to enforce compulsory education does not mean in their cases the deadening of spontaneity of action. "Compulsory education need not be 'compulsory' except to those who have no spontaneity to be deadened."‡ Much the same considerations apply to the regulation of liquor traffic. If unrestricted sale of liquor prevents a great number of people from realising the best life possible for them, it is the duty of the State to place restraints on the liquor trade. In the matter of interference with 'freedom of contract,' Green

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\* T. H. Green: *Principles of Political Obligation*, p. ix.

† *Ibid.*

‡ T. H. Green: *Principles of Political Obligation*, p. xxi.

rightly contends that "we must consider not only those who are interfered with, but those whose freedom is increased by the interference."\* As regards land ownership, Green's ideal is a class of small proprietors, tilling their own land.

Among those who do not subscribe to the idealistic view of State action, there are many who are quite willing to recognise that higher goods like religion and morality are incapable of enforcement by the State. But they see no reason the State should not regulate economic and social relations with a view to the promotion of the general good. Bosanquet's answer to this interpretation of State action would be that economic and social life is not entirely different from moral and religious life. Economic and social goods have a close relation to moral and spiritual goods. A good house, for instance, may often mean good manners, decent morals, and a fairly high type of religious life. Therefore, State activity, in the matter of the lower as well as of the higher goods, can only be of an indirect character. Material goods, no less than spiritual goods, when self-earned, are of more value than when they are provided for us from without. There may, however, be situations in which material conditions are positively hostile to the realisation of the good life. In these cases it is the duty of the State to remove such obstacles. But even here, Bosanquet contends, it is well to recognise the fact that to the extent to which material goods enter into the higher life and are "charged with mind and will," the State cannot enforce them except indirectly. This is why "bodily health, comfortable homes, effective income, etc" cannot be provided by State compulsion. The only cases where the State can take direct measures for the promotion of the good life are those in which the general line of growth is definitely known and where the resources of character and intelligence set free are "greater beyond all question than the encroachment" involved. That

\* T. H. Green: *Principles of Political Obligation*, p. xxi.

means that "When . . . we enforce an act (or omission) by law, we should be prepared to say, 'granting that this act which might conceivably have come to be done from a sense of duty now may come to be done for the most part from a fear of punishment, or from a mechanical tendency to submit to external rules (attended by the practical inconveniences of insensibility, half-heartedness, and evasion which attach to acts so enforced), still so much depends, for the higher life of the people, upon the external conditions at stake, that we think it worth while to enforce the act (or omission) though our eyes are fully open to the risk of extended automatism'."\* The key to the whole principle lies in the distinction between compulsion and spontaneous growth. Bosanquet does not contrast self-help with co-operation, but will with automatism.

"That the action of the State, being confined to externals, cannot directly promote its spiritual end does not mean . . . administrative nihilism."† It means only that there should be a definite struggle for a better life among individuals and groups of individuals before the State can be expected to act. In other words, pure social effort and invention should precede State action. Otherwise, "the good house (for instance) will not be an element in a better life, and the encroachment on ground of volition will have been made without compensation." The work of the State, therefore, can be described as one of "taking over" or of "endorsement," rather than one of direct action. The State is to protect, to encourage, to organise, but not to promote the good life directly. This is one of the reasons we place the State above all other institutions and give it the power to keep them in their proper places. Our social political, economic, and religious organizations are the laboratories in which to try experiments in better life. It is only

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\* B. Bosanquet: *The Philosophical Theory of the State*, pp. 179-80.

† p. xxxvi.      "      "      "      "

after preliminary experimentation and success in setting up a public conscience in favour of this or that undertaking that we can look to the State for aid. It is only then that we realise a good life. If the State precedes our efforts, what we often get is paternalism and not communalism (or social effort).

*Criticism—*

- (1) This view of State action seems to exaggerate the distinction between law and morality. While much of morality undoubtedly falls outside the sphere of law, the extent to which moral duties are covered by law is not sufficiently realised. The criminal law, for example, exerts moral influence over a wide area. All civilised States condemn cruelty to animals; it is wrong therefore the State penalizes it. In this case the State tries to enforce morality directly, and in a right way. At the same time there is a sphere of law, the bearing of which upon morality is so indirect that we can ignore it
- (2) "Hindrance of hindrances" to the good life seems to be a round-about and artificial way of explaining a simple fact. The ordinary man would say, for instance, that under modern conditions primary education is a universal necessity and that, therefore, the State should provide it. But when he is told that illiteracy is a hindrance to the good life and that free education is a second hindrance placed by the State in order to remove the first hindrance, he would consider it an artificial and pedantic explanation. The idealistic places undue emphasis on the negative character of State action. The State, we believe, should undertake both negative and positive measures, taking care, of course, not to deaden spontaneity in its individual members. Provision of free education, for example, is a measure more positive

than negative. Green and Bosanquet are mistaken in assuming that every positive measure will lead to automatism and the weakening of character. That will depend at least partly upon time, place, and circumstance.

- (3) This theory of State action is open to the danger that the State might wait too long before taking any effective step to "hinder hindrances to good life." If the State was to stand aside as a detached observer, letting us struggle for the good life as best we might, it might easily fall into a lethargy from which it would be difficult to rouse it. Bosanquet's answer to this criticism would be that the State is not a disinterested on-looker, but is something like "an eagle that stirreth up her nest and fluttereth over her young,"\* not with a view to letting the young ones perish, but in order to teach them a lesson in independence of character. Bosanquet further says that so long as "law can be altered by constitutional process," it is futile to think that the State can remain insensitive to our cries.
- (4) A further objection which may be raised is that "the idealist is so concerned with the spiritual foundation of society in the human conscience, so occupied with the inward man and the autonomy of his free-will, that he is blind to the need of reform of material conditions." In reply to this objection, it may be said that the ideal and the actual, the spiritual and the material, are not locked up in separate compartments, but are correlated. However true this may be in theory, in practice the correlation is not always clear.

\*Deuteronomy, ch. 33, v. II.

(5) The formula "hindrance of hindrances to good life" is so indefinite and vague that it is capable of being used both by individualists and socialists to support their respective theories of State action.

In spite of these limitations, the idealistic theory is sound in insisting that whatever the State may or may not do, it should not interfere with the disinterested performance of moral acts.

**5. General Welfare.**—This view underlies the actual operation of government in most modern States. It is practical and concrete and is capable of easy adaptation to varying circumstances. The strength of this view is due chiefly to the fact that the modern temper is distinctly against purely theoretical arguments and is in favour of practical results. Liberty is no longer regarded as freedom from law, nor is individual freedom measured by the narrowness of the range of State functions. The eighteenth century doctrine of the inherent and inalienable rights of man is practically dead, and the emphasis is on social welfare. Utilitarian and opportunistic considerations play a conspicuous part in determining the functions of the State. Care is taken to keep in view from a utilitarian standpoint the best interests of the individual and of society. Thus, we find that Jeremy Bentham, the founder of Utilitarianism, enquired into the practical utility of all institutions and laws before he could justify their existence.

Advocates of this view rightly claim that no hard and fast line can be drawn between legitimate and illegitimate State action. Whether the State ought or ought not to interfere in any situation must be decided on the merits of each case. Certain general principles, however, may be laid down governing State action :

- (1) Does the proposed action make for the common good ?
- (2) Is it likely to be effective ?
- (3) Can it be done without doing more harm than good ?

**Garner's View.** With general welfare as his guiding principle, Garner draws up his view of State action in the following terms: Police duty is not the sole mission of the State. The State ought to do more for its citizens than merely prevent them from robbing or murdering one another. It should contribute to the perfection of the national life, to the development of the nation's wealth and well-being, to its morality and its intelligence. It should secure for every man as effectively as possible those essentials of national humane living which are really each one's right. It should encourage literature, art, and science. It should, in general, be an instrument of social and economic progress. It ought to intervene and protect society against the evils of private monopoly. The presumption in general, however, is against State interference. Freedom should be the rule and interference the exception. The State should not ordinarily undertake to do for society what the individuals themselves can do as well, or better. No interference should be made on any special or doubtful grounds, but only when it can be clearly made out that it will be productive of public advantage. The policy of *laissez faire* is impossible to day, much more so now than in the eighteenth and nineteenth centuries. Liberty is not the end of all human associations. It is merely a means for the realisation of the fulness of individual life.

**MacIver's View,\*** which is tinged with pluralism, is that the sphere of State action should be determined by what the State *can* do as *an* organ (but not *the* organ) of the community. The question for him is not what the State should or should not do but what the State is permitted to do by other social organizations and by the limited nature of the State itself. The practical working of this view, however, results in much the same conclusions as those of the general welfare theory. The positive and negative tasks of the State, says MacIver,

\*Summary of The Modern State, Ch. v.

are to establish order and to respect personality. "To begin with, the State should not seek to control opinion, *no matter what the opinion may be.*"\* The exceptions to this rule are:

- (1) Incitement to break the laws of the State or to defy its authority should be taken cognisance of by the State. Citizens may properly criticise existing laws. They may use peaceful persuasion to convince others, and employ all constitutional methods in bringing about the desired change. But law-breaking cannot be tolerated. All this does not mean, however, that the State ought to punish every offender who preaches disloyalty.
- (2) "Like considerations apply to literature which clearly instigates to such immoral acts *as are at the same time prohibited by law.*"† care should be taken to see that the instigation is direct, and not constructive.
- (3) Freedom to express opinion does not mean freedom to express libellous or defamatory opinion or publish comments on a case which is *sub judice*.

**Law and Morality.** MacIver agrees with the idealists in holding that it is necessary to separate the inner sanction of morality from political law. Law cannot prescribe morality. It can prescribe only external actions. It should prescribe only those actions whose mere fulfilment, *from whatever motive*, the State adjudges to be conducive to welfare—such actions as promote the physical and social conditions requisite for the expression and development of free—or moral—personality. To turn all moral obligations into legal obligations would be to destroy morality. 'Puritanic' legislation stands self-condemned because it claims that its own morals should be those of all, even to the point of destroying all moral spontaneity

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\* *The Modern State*, p. 150.

† *Ibid*, pp. 151-2.

that is not their own. "The ethical appeal is always to the individual's own sense of what is right and wrong, in the last resort always to *his* sense of what is good and evil."\* Morality has for its basis the fact of choice. It is inward. It comprehends the unity of personality. The sphere of morality, therefore, can never be coincident with the sphere of political law. "Morality is always individual and always in relation to the whole presented situation, of which the political fact is never more than an aspect."†

Although law differs from morality, the citizen has a moral responsibility towards political law. He ought to obey it as a general rule. In MacIver's own words, "We obey the law not necessarily because we think that the law is right, but because we think it right to obey the law. Otherwise the obedience of every minority would rest on compulsion, and there would be so much friction in the State that its working would be fatally embarrassed. Political obligation is based on the general recognition of the universal service of law and government, for the sake of which we accept specific enactments which in themselves we disapprove."‡

**Law and Religion.** If morality cannot be enforced directly by law, much less can religion. The church ought not to appeal to the State to coerce those whom the church itself cannot persuade. To do so means to mistrust its own moral powers.

**Law and Customs.** Customs are the "enforced natural growths which reveal the underlying conditions of belief and mode of life."§ A State cannot legislate away the rooted customs of its citizens. Conflicts between law and custom are more likely to arise in democracies than in autocracies.

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\* R. M. MacIver: *The Modern State*, p. 155.

† R. M. MacIver: *The Modern State*, p. 156.

‡ R. M. MacIver: *The Modern State*, p. 154.

§ *Ibid.*, p. 160.

Democracies are less homogeneous and more unstable in respect of custom. Therefore they are ready to abrogate customs practised by minority groups. But experience shows, as in the case of Prohibition in the U. S. A., that the custom of minorities stubbornly resists the coercion of law. "Custom, when attacked, attacks law in turn, attacks not only the particular law which opposes it, but, what is more vital, the spirit of law-abidingness, the unity of the general will."\* Dangerous customs may have to be rooted out by legislation. "But such instances show at least that the main body of social customs is beyond the range of law and is neither made nor unmade by the State."†

**Law and Fashion.** "Over that minor and changeful form of custom called fashion the State has even less control."‡ "Here we have a curious illustration of the limitations of the State. A people will follow eagerly the dictates of fashion proclaimed by some unknown coterie in Paris or London or New York, but were the State to decree changes in themselves so insignificant, it would be regarded as monstrous tyranny—it might even lead to revolution."§

**Law and Culture.** "In general the whole of that living culture which is the expression of the spirit of a people or of an age is beyond the competence of the State. The State reflects it, and does little more. The State orders life, but does not create it. Culture is the work of community, sustained by inner forces far more potent than political law."¶ Art, literature, and music do not come directly within the purview of the State. In all these activities, "a people or a civilisation goes its own way, responsive to influences and

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\* *Ibid.* p. 161.

† *Ibid.*

‡ *Ibid.*

§ *Ibid.*

¶ *Ibid.* pp. 161-2.

conditions for the most part unknown to itself, and where known, for the most part uncomprehended and uncontrolled by the State.”\*

**State and War.** The State “has the power of life and death over all associations—no less than over persons—because of its unabated right to make war and peace.” It “claims the right to settle political disputes by force. In so doing it elevates political interests to complete supremacy over all other interests.”† In declaring war the State puts a particular political object above the general ends of the family, of the cultural life, and of the economic order. MacIver believes that this absolute power of the State should be limited, because it is, according to him, a limited organization and cannot be identified with the nation or the whole community.

The conclusion to which MacIver is driven on the whole question of State action is that, in general terms, the business of the State includes those external conditions of social living which are of universal concern in view of the acknowledged objects of human desire. In particular, it means the preservation of *order* “for the sake of *protection* and of *conservation* and *development*.”‡ Order for its own sake is futile. It is justified only to the extent to which it serves the needs of the community. It must be in conformity with and limited by the ideals of the community, particularly by the ideals of justice and liberty.

In practical terms, the functions of the modern State include all those activities which the State can pursue more efficiently and thoroughly than individuals or private organizations. It includes protection of the weak, establishment of a ‘minimum standard of living, maintenance of the minimum conditions necessary for healthy and decent living’, vast works

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\* *Ibid.*, p. 162.

† *Ibid.*, pp. 162-3.

‡ *Ibid.*, p. 185.

of constructive enterprise whose benefits will be shared by future generations, such as town planning and town-building, preservation of the country side, of the beauties of the forest and lake and mountain, fruitful experiments in irrigation, utilisation of the soil, breeding of plants and animals, control of insect pests, etc; promotion of the establishment of industries by mutual aid, control over currency, credit, etc; encouragement of industry, trade and commerce; conservation and development of human capacities, education, general promotion of the cultural life. In undertaking all these activities the State should take care not to repress the inner springs of conduct.

**Ross's View.** Professor Ross, the well-known American sociologist, looking at the question of social control from the point of view of social ethics, states his views in the following terms :

“ Each increment of social interference should bring more benefit to persons as members of society than it entails inconvenience to persons as individuals.

“ Social interference should not lightly excite against itself the passion for liberty.

“ Social interference should respect the sentiments that are the support of natural order.

“ Social interference should not be so paternal as to check the self-extinction of the morally ill-constituted.

“ Social interference should not so limit the struggle for existence as to nullify the selective process.” \*

#### 6. Classification of Governmental Functions—

Several writers have attempted a classification of governmental functions on the basis largely of what actually prevails in most modern States. These functions are divided into

- (1) Essential or fundamental, and
- (2) Optional or ministerial.

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\* Summarised by J. Ford: Social Problems and Social Policy, p. 249.

**(1) Essential functions—**

These include functions which are necessary for the continued existence of the State, for the guaranteeing of the civil and political liberty of the individual, and for the protection of his life, liberty and property against other individuals. They are determined, in other words, "by the threefold relations of State to State, of State to citizen, and of citizen to citizen."\* Woodrow Wilson † sums up the essential functions as follows :—

- (1) The keeping of order and providing for the protection of persons and property from violence and robbery.
- (2) The fixing of the legal relations between man and wife and between parents and children.
- (3) The regulation of the holding, transmission and interchange of property, and the determination of its liabilities for debt or for crime.
- (4) The determination of contract rights between individuals.
- (5) The definition and punishment of crime.
- (6) The administration of justice in civil cases.
- (7) The determination of the political duties, privileges, and relations of citizens.
- (8) Dealings of the State with foreign powers: the preservation of the State from external danger or encroachment and the advancement of its international interests.

While approving of the above classification, Gettell holds that there are two branches of administration—financial and military—which call for special attention. Under the financial functions he includes the imposition of taxation, the regulation of tariffs, liquor, coinage and currency, and administration of

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\* R. G. Gettell: *Introduction to Political Science*, p. 394.

† *The State*, pp. 613-14.

public property, such as public lands and forests, public buildings, and munitions of war and of State monopolies such as post offices and in some States, of railways and telegraphs. The management of the public debt is an allied function.

Military functions include the maintenance of an army, a navy, and an air force. "Ordinarily both armies and navies are considered safeguards of peace rather than direct challenges to war; armies being used to maintain internal order, and navies to protect commerce and colonies."\* In all the leading States a very large proportion of the national income is spent on the army and navy. "Even in the U. S., where the danger of war is comparatively remote, three fourths of the expenditure of the federal government is needed for army, navy and pensions."†

## (2) Optional functions.

These are functions which are considered to be non-essential for the existence of the State or for the maintenance of individual liberty and security. Yet they are generally undertaken by most States as being necessary for the promotion of general welfare. The line between essential and optional functions is not easy to draw and the two easily merge into each other. The classification is bound to vary from time to time and from place to place.

Optional functions are divisible into socialistic and non-socialistic functions. Socialistic functions are those which can be left to private enterprise, but which are usually undertaken by the State in order to avoid the evils of private control or on account of the greater efficiency of governmental agencies in certain tried fields. Examples of such functions are the ownership and management of railways and telegraphs in some States and the municipal control of water, gas, and electricity.

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\* R. G. Gettell : Introduction to Political Science, pp. 400-1.

† Ibid, p. 401.

Non-socialistic functions are those which, if not undertaken by the State, are not likely to be undertaken at all. "Under this head come care of the poor and incapable, maintenance of public parks and libraries, sanitation, certain forms of education, and the large amount of investigating and statistical work the purpose of which is to improve the environment and give information by which further improvement may be made."\*

Woodrow Wilson sums up the optional or ministrant functions under the following heads:—

- “(1) The regulation of trade and industry.
- “(2) The regulation of labour.
- “(3) The maintenance of thoroughfares,—including State management of railways and that great group of undertakings which we embrace within the comprehensive term ‘internal improvements.’
- “(4) The maintenance of postal and telegraph systems, which is very similar in principle to (3).
- “(5) The manufacture and distribution of gas, the maintenance of water works, etc.
- “(6) Sanitation, including the regulation of trades for sanitary purposes.
- “(7) Education.
- “(8) Care of the poor and incapable.
- “(9) Care and cultivation of forests and like matters, such as the stocking of rivers with fish.
- “(10) Sumptuary laws, such as ‘prohibition’ laws.”†

Science, 433.

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\* R. S. Gettell: *Introduction to Political Science*, p. 396.

† Summarised by R. N. Gilchrist: *Principles of Political Science*, p. 433.

## **NOTE ON APPRECIATION OF SOCIALISM.**

We are living at a time when there is so much loose and uncharitable talk about socialism that we have thought it advisable to devote a section to a sympathetic treatment of the movement which has come to stay. The proverbial arguments in favour of socialism may all prove to be false. But the spirit of the movement is sound.

### **1. Definition of Socialism.**

It is somewhat difficult to get a clear understanding of socialism from a study of current literature on the subject, since many statements that are made about it are either one-sided or prejudiced. The paradoxical saying that definitions seldom define holds particularly true with regard to socialism. As an instance of the question-begging character of many statements made about it, we may cite the definition of Roscher, a German economist, that socialism stands for "these tendencies which demand a greater regard for the common weal than agrees with human nature." Who is to be the judge of what "agrees with human nature?" "Human nature being what it is, we cannot do thus and so" is not seldom a lazy man's excuse for inaction. An able and scholarly professor like Hearnshaw lets himself be carried away by his prejudices when he says that the only two classes of people who are really attracted to socialism are cranks and criminals. To which class do Ramsay Macdonald, Snowden, Sidney Webb (now Lord Passfield), and Bernard Shaw belong?

What further makes socialism difficult of definition is its many-sidedness. Socialism ranges from schemes of profit sharing between the employer and the employee or capital

and labour to a form of paternalism where the State is expected to do everything for the individual. "Socialism," says an unsympathetic contemporary, "has as many heads as a hydra, and while you are engaged in cutting off one, another springs up in its place."

Socialism, we believe, is a philosophy and a religion. It is a spirit or a way of life. It is an ideal. Consequently it is not easy to define it academically. We cannot lay down in advance a cut-and-dried socialist programme in all its details. It is a living movement, full of possibilities, and not a ready-made scheme or fixed system which is incapable of being adapted to changing conditions. Socialism aims at the good of all, instead of the good of the few. It is a continuation of the struggle for political freedom. It is the next step in democracy. The freedom that we sometimes enjoy in democratic States untouched by socialism is simply freedom to starve.

As good a definition of socialism as any is the one by Sellars that it is "a democratic movement whose purpose is the securing of an economic organisation of society which will give the maximum possible at any one time of justice and liberty." Hughan defines socialism as "the political movement of the working class which aims to abolish exploitation by means of the collective ownership and democratic management of the basic instruments of production and distribution."

## 2. A Short History of Socialism.

Socialistic ideas are almost as old as civilised man himself, although the word 'socialism' came into use only during the thirties of the last century. Socialism in the Western world up to the middle of the nineteenth century was largely Utopian in character. The leading lights of this early type of socialism were More, Owen, Fourier, and Saint Simon. They were all idealistic and rationalistic and believed in bringing about socialism on a nation-wide scale by means of persuasion

and example. They did not attempt a clear distinction between socialism and communism. As a matter of fact, the ideal societies which they all hoped to create were of a communistic nature.

A second distinct stage in the history of socialism was reached with the arrival on the scene of Karl Marx and Engels. They gave the movement a popular and, what they called, a scientific basis. The idea of class war was first enunciated by them, Marx going to the extent of claiming that there was nothing in common between capital and labour and that what the labourer got as his reward was merely a subsistence wage. Marx was an agitator by nature and had no belief in isolated experiments and powers of persuasion. He made socialism a proletarian movement and gave it a distinctly political turn. His views are more realistic than scientific; and fortunately his materialistic interpretation of history is on the decline to-day.

The present stage may be described as a transitional period in which socialism is coming into its own, in spite of appearances to the contrary. A contest is going on between socialism and individualism on the one hand, and between socialism and communism on the other; and the sequel alone can tell which will succeed. It is no longer true to say with some interested people that "Marx was, and still is, the guiding spirit of modern socialism."

### 3. What Socialism is not.

"Give a dog a bad name and then hang it" is the advice which enemies of socialism have been following at all times. Socialism should not be identified with anarchism, syndicalism, extended bureaucracy, or communism. Socialism believes in change by legal means; anarchism in change by illegal means. The method of socialism is evolutionary and realistic; that of anarchism (excluding the philosophical variety) is "revolutionary and sentimentalistic." Anarchism is individualism run mad. One reason why people have interpreted socialism to mean

extended bureaucracy is that they are in the habit of looking upon government as an outside agency. But if, according to the socialistic theory, government is what the people have set up for themselves and is something of which they are an intrinsic part, extended activity of the State can't very well be called bureaucracy or even paternalism

Socialism is not the same as communism. While socialism stands for the common ownership of the means of production (and, according to some, of distribution) alone, communism stands for common ownership as well as for enjoyment of things in common. "From each according to his ability and to each according to his need" is a communistic, and not a socialistic, prescription. Socialism believes in reward according to effort or socially useful labour. It "holds to the method of private income and private property while communism denies its propriety." One is evolutionary and the other revolutionary. "Communism is vaguer, more sentimental, and more inclined to bureaucracy." Socialism is a friend of the State. The final goal of communism is its abolition.

#### 4. What does Socialism want?

The programme of moderate forms of socialism is summed up in the statement that socialism stands for a progressive nationalisation of the means of production with a view to a progressive equalisation of incomes. Socialism believes in subordinating private profit to human welfare. Production for use and not for personal gain or power, much less for ostentation, is its motto. It believes in the removal of unequal opportunities for self-development. Among the objects that socialism seeks to attain may be mentioned the following points made by Sellars:—

- (a) Reduction of the disorder characteristic of the present economic system. By means of group ownership and control wherever possible, socialism seeks to do away with some of the evils that we find in the present order: business

crises, unemployment, anarchic competition, and the tendency to subordinate production of necessities to the production of luxuries.

- (b) Lessening waste. In our present-day economic order there is waste of a colossal kind. In the United States, 6,000 brands of paper are put on the market, nearly half of which are unsold. The money wasted on advertisement in order to compete is almost criminal. Business is not business-like. There is waste not only of material goods, but also of human resources. The huge army of middlemen necessitated by the capitalistic order can be put to more productive purposes with proper co-ordination. It was recently discovered that nine-tenths of the retail price of a certain article went to advertisement, salesmen, package-form, and freight.
- (c) Eliminate anti-social forms of competition To say that socialistic co-operation excludes competition is a mistake. Competition may still exist, but it will be of a more worthy kind.
- (d) Eliminate unmerited poverty. That in our present-day society, many an individual is a victim of circumstances which he himself has not created and over which he has no control, is freely admitted by many. Sidgwick draws pointed attention to the fact that, in the struggle for existence, of two given men of equal ability and equal readiness to work, the presence or absence of capital makes considerable difference. The law of demand and supply does not operate as smoothly as the economists like to imagine.
- (e) Tap new energies which are now latent by means of vital education and by increase of opportunities for choice of work.

(f) Make labour-saving devices really saving of labour.

(g) Procure a fair degree of leisure for everybody.

One is aware of the fact that many who inherit wealth are encouraged to become parasites.

(h) Create a physically and mentally healthy society.

Socialism would eventually mean the eradication of unhealthy forms of competition, elimination of the capitalist, and expropriation of the landlord.

### 5. Objections to Socialism and Reply.

(a) Critics say that socialism means authoritarianism and bureaucratic control on a very extensive scale. Instead of private business there would be government factories and government stores. Everybody would become a State employee. The amount of supply necessary in each commodity would be fixed by continuous government returns. State officials would assign people to their tasks and determine the rewards and leisure that every one was to enjoy.

While this objection is a forcible one, it must be said in all fairness to democratic socialism that "what the people do for themselves cannot be paternalism. It simply testifies to the fact that the government is no longer a semi-caste affair but an instrument which the citizens have at last learned to handle for their own benefit." "The methods of control which are slowly developing in trades unions and in political institutions will undoubtedly be applied as a check upon any tendency to the overgrowth of officialism." (Sellars.)

(b) Socialism, it is said, preaches class war. It is selfish, materialistic, and utilitarian. It is a raid of the "have-nots" upon the "haves." In reply to this charge it may be said that class-war is essentially Marxism and not democratic socialism. Instances of the advocacy by

socialism to-day of class-war are to be regarded rather as the platform tactics of the orator to weld the working classes together and to catch votes than as a settled principle. Besides, in the present individualistic order of society there is class-war of a different kind. With some exaggeration it may be described as a raid of the "haves" upon the "have nots." Socialism stands for social good or human welfare as against the good of the few.

(c) Under socialism there would be no adequate motive for production. Efficiency of production would decrease because there would be no room for individual initiative, enterprise, and freedom. In reply to this objection, it may be asked whether this is not too low a view of human nature to take. Need self-interest always be the motive power for exerting oneself? As the social spirit of man increases, is it not possible to appeal more and more to other motives than private gain? Even to-day do we not find that, as we advance more and more in the realisation of our social responsibilities, non-material rewards are just as effective as material ones in spurring men to productive action? Bertrand Russell holds that the primary thing in man which needs to be satisfied is his "creative impulse." Prof. Hocking says much the same thing when he claims that the supreme factor in man which craves for satisfaction is "the will to power" or self-expression. Is not doing the kind of work that fits one or the satisfaction of rendering public service a reward in itself?

(d) The total output under socialism, it is said, would

probably be less. Even if this were true, is it necessarily a calamity? Why should we be obsessed constantly with the idea of production? Should we not now and then at least turn our attention to a just distribution as well? The problem for the future is one of distribution rather than of production.

- (e) Large-scale industry, it is argued, cannot be organised on a State-basis because of its sheer magnitude. Even in our present order of society, it is not true to say that the larger the business the more economically it can be run. Our answer is that, in some fields at least, we may substitute with advantage municipalisation for nationalisation. But with the gaining of experience, State management of post offices and telegraphs can be gradually extended to State control of forests, mines, railways, waterways, water-power, &c.
- (f) Socialism, its critics say, is a process of levelling down. Instead of some who would be rich and others who would be poor, as in our present-day society, under socialism everybody would be uniformly poor and miserable, all becoming members of a "fraternity of poverty." In reply to this it may be asked whether it is not possible to argue that socialism means a process of "levelling up." Besides, socialism does not necessarily discourage ability and talent. But it wishes them to be harnessed to higher ends than mere private gain. Socialism is optimistic with regard to the possibilities of changing human nature, and such optimism is shared by all great religious and moral systems.
- (g) What the individual wants more than wealth is

the opportunity for control, and this psychological factor is said to be ignored by socialism. There is genuine satisfaction in doing the kind of work in which one is naturally interested and in doing it in the way that one thinks best. Private property gives one the best chance possible to express one's personality. It is "concrete immortality." Our answer to this objection is that it is not convincing enough. Personality can express itself fully in ways other than through control of property which often results in control over the lives and destinies of human beings.

## 6. Value of Socialism and Conclusion.

The Bible teaches "Where there is no vision, the people perish." Socialism may be regarded as a vision, although its enemies might call it visionary. Even if socialism does not come in our own time, the movement is necessary for every society and every political group. If it does not have a positive value, it at least has a useful negative function to perform

- (a) In many Western lands it has united the working classes and has given them a sense of unity and dignity such as they never had before. They no longer consider themselves as mere chattels or "living tools." They insist on a minimum of economic welfare. Rise of wages, reduction of hours of work, improvement of factory conditions, &c have all been accomplished by Trade unionism, which may be regarded as the economic wing of socialism.
- (b) Socialism holds up standards of personal self-sacrifice and public service. It is partly responsible for the enlightened social conscience and public spirit that we see manifest in many of the advanced countries of the world to-day.

- (c) Socialism points out the influence of environment upon character. It has made people realise that even spiritual development requires a certain material basis. It has forced individualists to breathe into the carcass of eighteenth century individualism the life-giving principle of equal opportunity to all. Present-day individualism is midway between orthodox individualism, the motto of which is "sink or swim" for yourself and socialism pure and simple.
- (d) Socialism draws pointed attention to the fact that the individual is often a victim of circumstances which he himself has not created, and over which he has no control.
- (e) It shows that political democracy is incomplete without social democracy, *i. e.*, without a spirit of equality and fraternity. In a country like India where there are many unjust privileges and social inequalities and where even people who should know better hanker after titles and honours, the spirit of socialism is likely to be productive of much good
- (f) It has forced upon the attention of the world the urgent need that there is for social justice. In the words of Sir William Harcourt, "we are all socialists now", because we are all seeking to bring about a certain measure of social justice. "No state of society can be considered satisfactory or permanently tolerable in which so much poverty and misery exist as at present." The socialist desires that there should be no leisure for anybody, except for adequate services rendered and that no one should have a superfluity until the minimum needs of every one have been satisfied.

An intelligent, evolutionary, realistic socialism—socialism by stages—is a sound theory. Particular forms of socialism may be wrong, but the spirit of socialism is right, and the world should not willingly let it die.

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## CHAPTER XII.

### SOVEREIGNTY AND PLURALISM.

#### I. Definition of Sovereignty.

Sovereignty is one of the most important concepts of political science. Yet no term has given rise to more discussion and confusion than the word 'sovereignty.' It is used in a variety of ways which are not clearly distinguished from each other. 'Sovereignty' is derived from the Latin word *superanus*, meaning supreme. Sovereignty means that in every full-fledged or independent State there is an ultimate authority, an authority from which there is no appeal. This authority is supreme both in internal and external matters. Internally, no individual or group of individuals has the legal competency to act contrary to the decisions of the sovereign power. In external matters, too, the sovereign State is supreme. It is its own master. International agreements and conventions are not legally binding on it.

Definitions of sovereignty are many and varied.\* Bodin, the first Western writer to develop a systematic doctrine of sovereignty, defines it as "the supreme power over citizens and subjects, unrestrained by law." Grotius, who wrote half a century later, defines it as "the supreme political power vested in him whose acts are not subject to any other and whose will cannot be overridden." It is the "moral faculty of governing a State."

Among modern writers, Duguit, the well-known French professor, says that sovereignty as generally understood in

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\*Refer to J. W. Garner : Political Science and Government, p. 159.

his country is the "commanding power of the State ; it is the will of the nation organised in the State ; it is the right to give *unconditional* orders to all individuals in the territory of the State." Burgess, a noted American writer, describes it as "original, absolute, unlimited power over the individual subject and over all associations of subjects." Elsewhere he calls it "the underived and independent power to command and compel obedience." Pollock's definition is "Sovereignty is that power which is neither temporary nor delegated, nor subject to particular rules which it cannot alter."\* Finally, Willoughby says "Sovereignty is the supreme will of the State."†

## II. History of Sovereignty.

In ancient Greece there was no occasion for claiming the sovereignty of the State, because there were then no rival associations, nor was there any conscious opposition between the individual and the State. Nevertheless, we find in Aristotle's *Politics* his realisation of the need for a supreme power in the State. This power, Aristotle observes, may be in the hands of one, or a few, or of many. Supremacy is central in his political thought, but it is not the same as modern sovereignty. According to Aristotle, the supreme power or the ruling class makes the constitution, while to modern thinkers it is the constitution which makes the "sovereign." The Stoics who came later advanced the doctrine that the State does not make law, but law makes the State, thus anticipating by many centuries the teaching of Duguit and his school.

There was not much need for a well-worked out doctrine of sovereignty in Roman times either. Rome became the mistress of the world, and she had no external or internal competition to fear. Besides, the Roman jurists had no

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\* F. Pollock : *History of the Science of Politics*, p. 49

† W. W. Willoughby : *Nature of the State*, p. 280.

capacity for political speculation. However, in the classic body of Roman law we find the beginning of the theory of sovereignty. The well-known Roman dictum was "The will of the Prince has the force of law, since the people have transferred to him all their right and power." Much is said in Roman law about the *imperium* of the State.

The Middle Ages presented conditions which were unfavourable for the formulation of any theory of sovereignty. These conditions were the conflict between the Church and State and feudalism. The Church claimed supremacy not only in spiritual matters, but also in secular affairs, and at least for some time almost made good its claims. The rival of the Church, the Holy Roman Empire, was an empire only in name and could not establish supremacy of any kind. Co-existent with the antagonistic claims of the Church and the Empire, there prevailed feudalism which meant decentralisation in political affairs. The king was not a "sovereign" in the modern sense of the term. His power differed from that of the earls and barons not in quality, but only in quantity. If the king was "sovereign" in his kingdom, so was the earl in his earldom and the baron in his barony. This state of affairs led to the theory of *dominion* (as against sovereignty), which meant superiority rather than supremacy. It also led to the conception of the territorial sovereignty of a king or prince; and as the intermediate lords in the feudal system died out, the territorial sovereign became supreme. It is only gradually that the territorial sovereignty of an individual gave place to the later idea of the sovereignty of the State as such.

Renewed interest in Roman law in the twelfth century gave rise to the doctrine of popular sovereignty. Thomas Aquinas, the greatest thinker of the thirteenth century, "taught that the supreme power arose from a purely human foundation—namely, the act of the people, in contrast to the God-established Church. The authority of the Pope, it was

maintained came directly from God ; that of the Emperor from the consent of the people and the co-operation of the Church."\* This idea of popular sovereignty was developed still further by Marsilio of Padua and William of Ockam in relation to the Church ; and it played an important part in the Conciliar controversy. "So universally prevalent was the idea of original popular sovereignty that 'from the end of the thirteenth century it was an axiom of political theory that the justification of all government lay in the voluntary submission of the community ruled : Government based on the consent of the governed was the ruling theory in the Middle Ages.' † By 'people' was meant nothing more than the mass of the subjects.

The modern idea of sovereignty as the supreme law-making body was lacking in the Middle Ages. It was not easy to find in mediaeval Europe "any authority supreme in all respects, and even if found, it was an authority merely to promulgate, administer, and interpret a law already in being, not to make a new one."‡

*Bodin* in sixteenth century France was the first writer to give a definite and comprehensive account of the modern theory of sovereignty. He lived at a time when France was torn by religious schisms as a result of the Reformation. The Catholics would not recognise a Protestant king and the Protestants would not recognise a Catholic king. Bodin, who belonged to the nationalist party (*les Politiques*), saw the urgent need of a civic power within the State which would be able to assert its authority against other States outside as well as against other authorities within the State. In an earlier work, published in 1566, Bodin asserted that

\* C. E. Merriam : History of the Theory of Sovereignty Since Rousseau, p. 12.

† C. E. Merriam : *Ibid.*

‡ C. H. McIlwain : Political Science Quarterly, March 1938, p. 98.

the chief function of such a supreme authority was control over the administration and interpretation of law. But in his more famous *Republique*, published ten years later, Bodin emphasised the modern idea that the supreme function of the sovereign authority was to make laws which would hold against all powers within and without the State.

The chief features of Bodin's doctrine of sovereignty are :—

- (1) Freedom from external control. The king of France, e. g., was to be free from the authority of other kings, the Pope, &c.
- (2) Freedom from internal control. The king of France, Bodin said, was to be above all rebellious feudal powers within the State.
- (3) Supremacy in the making of laws. Being itself the maker of laws, the sovereign power is above the laws that it creates. This does not mean that it is above duty and moral responsibility. It is only above the positive laws which it creates and enforces. In Bodin's own words, "Sovereignty is a power supreme over citizens and subjects, itself not bound by the laws." Such a power somewhere in the State, Bodin conceived, was essential to national independence.
- (4) Absoluteness. Sovereignty "is that power which is neither temporary, nor delegated, nor subject to particular rules which it cannot alter, nor answerable to any other power on earth."
- (5) Indivisibility. It is absurd to speak of two supreme powers within the same State.
- (6) Imprescriptibility. Sovereignty is unlimited in time. It is perpetual. Mere lapse of time cannot efface it.

(7) **Limitations.** Though legally supreme, the sovereignty of Bodin is subject to moral obligations imposed by "the laws of God, of nature, and of nations." The sovereign should recognise his moral duty to observe treaties with other sovereigns and contracts with his own subjects. However free he may be from the laws which he himself makes, he is not free from the fundamental rules upon which the State itself rests and by which the sovereign is constituted and his authority defined. So, according to Bodin's theory, "there never could be a true republic except one founded in justice, nor any legitimate authority within such a republic."\*. In these fundamental rules and immemorial customs, McIlwain finds the foundations of the modern "written constitutions."

It is necessary to note that Bodin's theory of sovereignty is State sovereignty and not popular sovereignty. The sovereign power, says Bodin, may be vested in one, a few, or the many. But his own preference is for the one, as is the case with Hobbes. He is definitely opposed to the mixed form. He does not regard the State as a whole as the sovereign, but "one element thereof is the bearer of the supreme power and the other is the object against which this power is directed."† Bodin's theory of sovereignty furnished the basis for seventeenth and eighteenth century absolutism and laid the foundations for the modern doctrine of sovereignty.

Over against the theory of Bodin, stood the theory of the "*Monarchomachs*." The central features of their doctrine were "the original and inalienable sovereignty of the people,

\* C. H. McIlwain : *Ibid*, p. 100.

† C. E. Merriam : *History of the Theory of Sovereignty since Rousseau*, p. 16.

the contractual origin of government, the fiduciary character of all political authority, and the consequent right of the people to resist and destroy the existing rulers whenever found guilty of a breach of trust."\* The ablest among these writers was Althusius, who was one of the first to advance the theory of contract. He denies that sovereign power "is absolute or supreme, since it is subordinate to the laws of God and nature."† He is inclined to admit, however, that it is free from the civil law. He maintains that the ultimate source of all governmental authority is the people, "which is the great political creator, the true monarch-maker."‡ Sovereignty, he claims, belongs not to any particular individual or individuals, but to the whole people. The supreme power was not only *originally*, but remains *permanently*, in the people. The people are immortal, while the rulers are mortal. Hence the people alone are the permanent possessors of power. Governmental power is, therefore, a purely derived authority. It rests upon a contract. If the terms of this contract are detrimental to the people's rights, they are to be regarded as null and void.

In spite of their able and energetic defence of "popular sovereignty," neither the Monarchomachs nor their leader, Althusius, give us a satisfactory interpretation of this conception. By sovereign people they seem to mean only the governed part of the State. The rulers are excluded. "The idea of sovereignty vested in an entity which included both ruler and ruled,"§ is foreign to the thinking of the Monarchomachs.

The theory of *Grotius* occupies a middle position between the theories of Bodin and the Monarchomachs. He seeks a

\* *Ibid.*, p. 17.

† *Ibid.*, p. 18.

‡ *Ibid.*

§ C. E. Merriam: *Ibid.*, p. 21.

compromise between the popular and the monarchical ideas. By sovereignty he means "that power whose acts are not subject to the control of another, so that they may be made void by the act of any other human will." He does not insist, like Bodin, on the "absolute and perpetual power" of the sovereign. So long as the power lasts it is irrevocable. "The supreme power is, as customary, limited by divine law, natural law and the law of nations, but also by such agreements as are made between ruler and ruled." \* Grotius freely concedes that the sovereign power is capable of division, and quotes the example of Rome with one ruler in the east and one in the west.

As regards the location of sovereignty, Grotius' teaching was that the general bearer was the body politic or the State as a whole, while the special bearer was the government. By adopting such a distinction Grotius was able to disprove the assertion of Althusius and the Monarchomachs that the supreme power everywhere belonged to the people *minus* the government.

Unlike modern thinkers, Grotius maintains that a people may completely alienate their sovereignty, as an individual his control over a piece of property. "The land or the people may be bought or sold like any other property." † This patrimonial notion of sovereignty is totally rejected to-day.

If Bodin develops chiefly the internal aspect of sovereignty, Grotius emphasises the external aspect. He stoutly maintains the equality and independence of several sovereign groups.

The theories of Hobbes, Locke, and Rousseau have been dealt with in an earlier chapter. We shall, therefore, only sum up the most salient points here. Just as Bodin gives us a rationalisation of actual political conditions that prevailed

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\* C. E. Merriam : *Ibid.*, pp. 21-22.

† *Ibid.*, p. 23.

in sixteenth century France, so *Hobbes* builds his theory on the unsettled conditions of England between 1640 and 1660. This was a period of political strife and civil war. The sovereign power required to cope with such a situation is conceived by Hobbes in the most absolute terms possible. Starting from a fictitious state of nature, interpreted in terms of primitive anarchy, Hobbes makes the individual surrender his rights unreservedly to a single person (or sometimes persons), who thenceforth becomes the bearer of the personality of all the contracting individuals. There is no question of the people delegating or alienating their sovereignty, for they are not a people until the sovereignty is created. Sovereignty and its subjects come into existence simultaneously. The supreme characteristic of sovereignty is its power to compel obedience. Might, not law, makes right.

Sovereignty, as interpreted by Hobbes, is far more absolute than in the theory of Bodin. Once having entered the contract, the people have no right to enter into a new agreement or covenant, not even with God. The sovereign, not being a party to the contract, cannot be guilty of breach of contract. He can do no legal injustice, although he may commit moral iniquity. He cannot be punished. He is "judge of the means necessary for the defence of the State; has the right to decide what doctrines shall be taught among the subjects; the law-making power; the judicial power; the right to carry on war: the right to appoint officers; the rewarding and punishing power."\* All these rights, say Hobbes, are "incommunicable and inseparable." Laws of God and of nature are not limitations upon the sovereign, because of these he is the final judge.

Sovereignty is thus absolute, unified, and inalienable,

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\* C. E. Merriam, *Ibid*, p. 26.

and is based upon a voluntary but irrevocable contract. This theory played a very important part in the later development of political science.

*Pufendorf* in Germany developed a theory of sovereignty which combines in a remarkable way the views of Grotius and Hobbes. Like Locke, he posits two contracts--the original contract responsible for the formation of a civil society and a subsequent contract between the people so formed and the government. The sovereign power thus created is *supreme*, but not *absolute*. It cannot do anything it pleases. Restrictions should be placed on the ruler in order to check his tendency to usurp all authority. It is not essential that the sovereign should have all power. It is sufficient if he have the highest power.

*Locke* was the Whig champion of the Bloodless Revolution of 1688. In his treatment of the social contract, Locke carefully avoids the term "sovereignty." He speaks of the "supreme power," instead. The supreme power, for all practical purposes, rests with the government, which is a delegated authority. Back of the government and superior to it, is the people as a whole. When the government fails to carry out its trust, the people rise in rebellion and overthrow it and set up another government in its place. So long as the government lasts, the legislative exercises the supreme power. This distinction between two "supreme powers" was developed in the nineteenth century into the clear-cut ideas of political sovereignty and legal sovereignty.

Merriam distinguishes an ascending series of three "sovereigns" in Locke's treatment of the subject. They are the formal, the governmental, and the political sovereigns. The *formal* sovereign, so far as England is concerned, is the king. He is supreme while within the limits of the law when the legislature is not in session. He is, in Locke's own words, "the image, phantom or representative of the commonwealth." In him is vested the executive power. He also has a share in

the legislative. Next in order comes the legislature, the supreme part of the government. It may be described as the *governmental* sovereign. The ultimate sovereign is the civil or political society which has set up the legislature, and it might be called the *political* sovereign. It is a latent sovereign and becomes active on the dissolution of the government. Revolution is thus justifiable when it is an act of the whole people. But there is difficulty in determining when it is such an act. On this Locke's theory gives us no help. The success or failure of a rebellion does not prove that it is or is not an act of the community as a whole. It is instructive to note that "in the particular case of the reform of the English representative system, Locke does not contemplate the carrying out of his own theory."\*

Locke's sovereign authority, no matter where it is located, has no absolute powers.

*Rousseau* places sovereignty in the body politic as a whole. This is the familiar doctrine of popular sovereignty. In developing this conception, Rousseau combines the absolute sovereignty of Hobbes with the "popular consent" of Locke. Sovereignty is regarded as absolute, inalienable, indivisible, and even infallible. The only manifestation of sovereignty is the general will of the people which, to use the humorous language of Hearnshaw, is "Hobbes' Leviathan with his head chopped off." In Rousseau's thinking there is very little to distinguish the general will from sovereignty. The terms are practically identical. General will always expresses the common interests of all the members of the State. "What makes the will general is less the number of voters than the common interest uniting them."† When the general will is in operation, the dissenting minority may be "forced to

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\* T. H. Green: *Principles of Political obligation*, p. xii.

† J. J. Rousseau: *Social Contract*, p. 28.

be free"! for they do not know what is to their own interest. They are more free if they are out-voted than if they are allowed to have their way. Acts of the general will alone can properly be called laws. Laws, therefore, must deal with general interests and must emanate from the people as a whole. Government deals only with particular decrees and is a mere agent of the sovereign people. "With Hobbes, the Government swallowed up the State, and became the sole representative of its personality...With Rousseau, the people became the Government, and the Government was lost in the State."\*

Summing up the views of Hobbes, Locke, and Rousseau, Bosanquet observes, "For Hobbes . political unity lies in a will which is actual, but not general ; while for Locke it lies in a will which is general, but not actual."† Rousseau, on the other hand, places political unity in a will which is "at once actual and general."‡

After the time of Rousseau the legal theory of sovereignty was developed at great length by *Bentham* and *Austin* in England. Bentham's idea of sovereignty clearly anticipates that of Austin. Thus he defines political society as follows: "When a number of persons (whom we may style subjects) are supposed to be in the habit of paying obedience to a person, or an assemblage of persons, of a known and certain description (whom we may call governor or governors) are said to be in a state of political society." Once again, like Austin, Bentham defines laws as the commands of a supreme governor or the sovereign. The powers of the sovereign are unlimited in theory, but are limited in practice by the possibility of resistance and "express convention." Bentham does not hold the Hobbesian dogma that sovereignty is illimitable and indivisible.

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\* C. E. Merriam: *Ibid.*, pp. 37-38.

† B. Bosanquet: *The Philosophical Theory of the State*, p. 98

‡ *Ibid.*, p. 99.

The supreme duty of the Sovereign is to make laws. Every law, to Bentham, is an evil, because every law, he argues, is an infraction of freedom. Therefore, laws are justifiable only in so far as they promote the greatest happiness of the greatest number. "The right to elect and remove officials is the highest law of sovereignty."

The teaching of Hobbes and Bentham reached its culmination in the writings of *John Austin*, who gave the doctrine of sovereignty a classical exposition which was widely accepted till recent times. Postponing a detailed treatment of Austin's theory to a later place in the chapter, we shall confine ourselves here to its bare outlines.

In his *Lectures on Jurisprudence*, Austin writes "The notions of sovereignty and independent political society may be expressed concisely thus. If a *determinate* human superior, not in a habit of obedience to a like superior, receive *habitual* obedience from the *bulk* of a given society, that determinate superior is sovereign in that society, and the society (including the superior) is a society political and independent." Laws are defined simply as the command of a superior to an inferior. In Austin's own words "Law is the aggregate of rules set by men as politically superior, or sovereign, to men as politically subject." The chief reason for the bulk of a given society rendering habitual obedience to a determinate human superior is the power it possesses "to put compulsion without limit on subject or fellow-subjects."\*

One of the most important things to note in Austin's theory of sovereignty is that he makes power or might the determining factor. There is no question of laws or right. If Rousseau places the emphasis on *will*, Austin's emphasis is on *force*. Apropos of this, Bosanquet remarks "Austinian

\* Volume 1, p. 226, 1869 ed.

† Maine's paraphrase of Austin's doctrine in the *Early History of Institutions*, p. 350.

sovereignty is based on the idea of force ; sovereignty in our sense (the idealistic) is based on the will of the whole."\*

*T. H. Green* attempts a reconciliation of the apparently conflicting views of Austin and Rousseau on the question of sovereignty. He holds that Austin is right, as against Rousseau, when he locates sovereignty in a determinate, person or persons, with whom, in the last resort, lies the recognised power of imposing laws and enforcing their observance, over whom no legal control can be exercised."† The term 'sovereign' having acquired this definite meaning in the Western world, Green says Rousseau was misleading his readers when he located sovereignty in an indeterminate general will. He is right, however, as against Austin, when he holds that the primary reason for obeying the sovereign is not fear, but the consciousness that such obedience is essential to the promotion of a common interest of which the individual interest is an intrinsic part. In other words, obedience is rendered to a determinate superior because it is regarded as expressing or embodying the general will. The sovereign does not exercise an unlimited power of compulsion. Its power is dependent in the long run "upon conformity to certain convictions on the part of subjects as to what is for their general interest."‡ Assent to the sovereign's authority is not "reducible to the fear of the sovereign felt by each individual. It is rather a common desire for certain ends."§ If this desire ceases to operate or comes into general conflict with the sovereign's commands, the habitual obedience will cease also.

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\* B. Bosanquet : The Philosophical Theory of the State, p. LV.

† T. H. Green : Principles of Political Obligation, p. 97.

‡ T. H. Green : Op Cit., p. 96.

§ T. H. Green : Ibid.

### III. Characteristics of Sovereignty.

Writers on the traditional doctrine of sovereignty have summed up its attributes under (1) absoluteness; (2) universality; (3) inalienability; (4) permanence; (5) indivisibility.

**(1) Absoluteness.** The sovereign power is said to be absolute and unlimited. There is no power on earth which can bind it.

(a) Internally, the sovereign power has absolute power over all individuals and groups of individuals within the State. Whatever limitations there may be are self-imposed limitations. Therefore, they can be removed by the State in a legal manner. "An unchangeable law," in the words of Gettell, "is a legal impossibility." \*

(b) Externally, too, the sovereign authority is considered to be supreme. It is absolutely "independent of any compulsion or interference on the part of other States." † Treaties, international understandings and conventions, etc. do not destroy sovereignty, inasmuch as there is no compelling power behind them. They are valid only to the extent to which the sovereign State chooses to respect them. International courts can only interpret international law; they have no power to enforce it.

The remaining attributes of sovereignty are corollaries of this.

**(2) Universality** or all-comprehensiveness. The sovereign power, as seen already, is supreme over all persons, associations, and things within the State. This does not prevent the State, however, from waiving its right of jurisdiction in certain matters. No person or body of persons can claim exemption as a matter of right. A well-organised world-wide association

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\* R. G. Gettell : Introduction to Political science, p. 94.

† Gettell : Op. Cit., p. 95.

such as the Free Masons is not superior to any State. It is subject to the laws of individual States.

The only apparent exception to the universality of sovereignty, as pointed out by Gilchrist, is what is known as the extra-territorial sovereignty of diplomatic representatives in certain countries. Gilchrist explains this fact as follows: "An embassy in a country belongs to the country it represents, the members of the embassy being subject to the law of their own country. This, however, is only a matter of international courtesy and is no real exception. Any state in virtue of its sovereignty could deny the privileges so granted." \*

**(3) Inalienability.** If sovereignty is absolute and unlimited, it stands to reason that it should also be inalienable. A sovereign State cannot give away any of its essential elements without destroying itself. The well-known American writer, Lieber, says "Sovereignty can no more be alienated than a tree can alienate its right to sprout or a man can transfer his life and personality without self-destruction." A State may cede part of its territory to another State. By so doing it surrenders its sovereign rights over that particular territory without destroying its sovereignty as such. There are two sovereign authorities thereafter, exercising control over two distinct territories. Likewise, the abdication of a monarch or sovereign does not mean the alienation of sovereignty." "It is merely a change in the form of government by the resignation of his position by a titular sovereign." †

Rousseau, who upheld the inalienability of sovereignty claimed that power could be transferred, but not will. Sovereignty is the very essence of the personality of the State and to alienate it is equivalent to State suicide.

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\* R. N. Gilchrist: *Principles of Political Science*, p. 110.

† Gilchrist: *Op. Cit.*, p. 111.

**(4) Permanence or perpetuity.** Sovereignty is as permanent as the State itself. So long as the State lasts sovereignty lasts. The two are inseparable. The death or dispossession of a king or president does not mean the cessation of sovereignty. Sovereignty shifts immediately to the next bearer. "It is only a personal change in the government, not a break in the continuity of the State." \*

**(5) Indivisibility.** The indivisibility of sovereignty is a logical deduction from its absoluteness. Thus Gettell writes, "If sovereignty is not absolute, no state exists ; if sovereignty is divided, more than one state exists."† Certain pluralists attack this point of view. They would divide sovereignty between the State and other groups or associations within the State ministering to the different interests of man. If this teaching should be put into practice, it would eventually mean the disintegration of the State. Even those who are not pluralists have at times advocated a theory of divided sovereignty, especially in relation to federal States. A. L. Lowell, the ex-president of Harvard, emphatically asserts that "there can exist within the same territory two sovereigns issuing commands to the same subjects touching different matters."‡ Likewise, Lord Bryce claims that legal sovereignty can be "divided between two co-ordinate authorities."§ These writers probably have in mind a case like that of the U. S. A., where the Supreme Court still maintains that the United States is sovereign as regards the powers conferred on the national government and the States are sovereign as regards those reserved to them. Calhoun and many other eminent thinkers who adopt a different point

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\* Ibid.

† R. G. Gettell : *Introduction to Political Science*, p. 95.

‡ Quoted by J. W. Garner : *Political Science and Government*, p. 175.

§ Ibid.

of view interpret conditions in America to mean that sovereignty which is an indivisible unit expresses itself through the national government in certain matters and through the State governments in certain others. In other words, sovereign authority is not divided between the federal and State governments, but rests with the power back of both which has the competency to determine the powers of both, "and which can redistribute these powers between them in such a way as to enlarge or curtail the sphere of either."\*

To sum up the discussion in the forcible words of Calhoun, "sovereignty is an entire thing; to divide it is to destroy it. It is the supreme power in a state, and we might just as well speak of half a square or half a triangle as of half a sovereignty."† Or, again, "There is no difficulty in understanding how *powers* appertaining to sovereignty may be divided and the exercise of one portion be delegated to one set of agents and another portion to another, or how sovereignty may be vested in one man, in a few, or in many. But how *sovereignty* itself, the supreme power can be divided.....it is impossible to conceive."‡

#### IV Different Meanings of Sovereignty.

(1) **Titular Sovereignty.** The term sovereignty is used in different senses, and failure to distinguish them results in much confusion. The term 'titular sovereignty' is used with reference to a king or other monarchial ruler who at one time was a real sovereign, but who for a long time has ceased to be such. Even to-day the king of England is officially referred to as the "sovereign," although his sovereignty is only nominal. Real power passed to other hands long ago. Therefore, the sovereignty of the king is only a harmless fiction.

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\* J. W. Garner: Op. cit., p. 178.

† Quoted by Garner: Op. cit., p. 173.

‡ Quoted by Garner: Op. cit., p. 177.

**(2) Legal Sovereignty.** A distinction is often made between legal sovereignty and political sovereignty. The legal sovereign is the supreme law-making body in the State. Only its commands are laws. It can override prescriptions of the divine law, principles of morality, and dictates of public opinion. Such a sovereign is found in England in the King-in-Parliament. The British Parliament, according to Dicey, is "so omnipotent, legally speaking ..that it can adjudge an infant of full age; it may attaint a man of treason after death; it may legitimise an illegitimate child, or, if it sees fit, make a man a judge in his own case."\* Legal sovereignty is the lawyer's conception of sovereignty. It is "the determinate person" referred to in Austin's definition of sovereignty.

**(3) Political Sovereignty.** This term is not so easy to define. In a democratic country, while the legal sovereign is the supreme law-making and law-enforcing body, there is behind it the will of the people which is the ultimate and final source of all authority. It is the authority from whose verdict there can be no appeal. In the words of Dicey, "Behind the sovereign which the lawyer recognises there is another sovereign to whom the legal sovereign must bow." To quote the same authority again, "that body is politically sovereign, the will of which is ultimately obeyed by the citizen of the state."†

Much confusion arises when we attempt an exact definition of the term 'political sovereignty.' It is vague and indeterminate. It is not something which can be located with exactness. In a country where direct or pure democracy prevails, legal and political sovereignty are practically coincident. But most countries where democracy prevails are of the representative or indirect type. Therefore, legal

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\* J. W. Garner : Op. cit., p. 163.

† A. V. Dicey : Law of the Constitution, 2nd ed., p. 66.

sovereignty and political sovereignty are different. Some writers identify political sovereignty with the collective community, some with the mass of the people, some with the general will, some with public opinion, some with the electorate, and still others with the physical power of that part of the people who can bring about a successful revolution. Each one of these points of view contains an element of truth, and it is impossible to say that any one of them is entirely sound as against the rest. Owing to this confusion some writers prefer to confine "sovereignty" to its legal meaning and abandon the conception of political sovereignty altogether. Thus, Gettell observes, "Any attempt...to find a 'political sovereign' back of the legal sovereign destroys the value of the entire concept and reduces sovereignty to a mere catalogue of influences."\* Likewise, Leacock writes, "The moment one passes from the dry certainty of the Austinian conception of legality, all is confusion."† One thing that is clear, however, is that the only sovereignty that the lawyer and the judge can recognise is that of the legal sovereign. Public opinion, general will, wishes of the electorate, possibilities of revolution, &c. all affect the decisions of the legal sovereign. But they are neither definite nor organised as is the legal sovereign. A well-ordered State requires the supremacy of the legal sovereign to which habitual obedience is rendered by the bulk of the citizens. It should provide at the same time for the freest scope possible for the bringing about by constitutional methods of the changes desired by the people.

**(4) Popular Sovereignty.** From political sovereignty to popular sovereignty there is a natural transition. According to the doctrine of popular sovereignty, ultimate authority rests with the people. This doctrine was enunciated in the

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\* R. G. Gettell : Op. cit., p. 98.

† S. Leacock : Elements of Political Science, p. 61.

Middle Ages by such writers as Marsiglio of Padua and William of Ockam. In the eighteenth century it became the cornerstone of the teaching of Rousseau, who proclaimed it "as with a trumpet blast."\* The doctrine received further impetus in the nineteenth century with the growth of democracy, so much so that, in all self-governing countries, it is taken for granted that the people are the ultimate custodians of political authority. The legal sovereign cannot last very long if it deliberately and continuously opposes the wishes of the people, for the people in the last resort can have recourse to force and establish a new government by means of revolution. Phrases like 'popular control' and 'popular government' which are often used as synonyms for democracy, show the extent to which the people as a whole are the ultimate check on the legal sovereign.

While the doctrine of popular sovereignty is a very attractive doctrine and satisfies the vanity of the people, difficulty arises when we attempt to analyse the concept and give it a precise meaning. The more we ponder over it, the more difficult it is to define it. It is open to all the criticisms to which the conception of political sovereignty is exposed. The two possible meanings that can be given to the term 'people' in defining popular sovereignty are (a) "the total unorganised indeterminate mass"; (b) the electorate. People, as understood in the first sense, cannot obviously be the sovereign. As regards the second, people can act only through legal channels if they are to be regarded as sovereign in any sense at all. In the words of Garner, "Unorganised public opinion, however powerful, is not sovereignty unless it is clothed in legal form, no more so than the informal or unofficial resolutions of the members of a legislative body is law."† In actual practice, popular sovereignty seems to mean

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\* J. W. Garner : Op. cit., p. 164.

† J. W. Graner : Op. cit., p. 165.

nothing more than public opinion in time of peace and the "m might of revolution" in the case of a conflict.\*

Interpreted in the above manner, there is little to distinguish popular sovereignty from political sovereignty. Gilchrist who insists on the distinction holds that popular sovereignty is practically equivalent to political liberty or "popular control." It means the power of the masses as against the power of an individual ruler or of a class. It implies equal manhood suffrage, control of the legislature by the representatives of the people, and the control of the nation's finances by the popularly elected House.

Whatever difficulties we may encounter in defining "popular sovereignty," the doctrine contains several valuable ideas:—

- (a) Government does not exist for its own good. It exists for the good of the people.
- (b) If people's wishes are deliberately violated, there is the possibility of revolution.
- (c) Easy means should be provided for a legal way of expressing public opinion.
- (d) Government should be held directly responsible to the people through such means as frequent elections, local self-government, referendum, initiative, and recall.
- (e) Government should exercise its authority directly in accordance with the laws of the land and not act arbitrarily.

**(5) De jure and de facto Sovereignty.** Sovereignty being a question of fact, a distinction is sometimes made between *de jure* and *de facto* sovereignty. The *de jure* sovereign is the legal sovereign and the *de facto* sovereign is the actual sovereign—a sovereign which is actually obeyed

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\* Refer to R. G. Gettell: *Introduction to Political Science*, p. 100.

by the people whether it has a legal status or not. *De facto* sovereignty may rest purely on physical force or religious influence, while *de jure* sovereignty has the legal right to command obedience. The distinction between the two comes out sharply in times of revolution. Some revolutions mean a mere change in the personnel or organisation of government, while others result in a complete destruction of the old legal sovereign and the establishment of a new one. It is a mistake to regard *de facto* sovereignty as "unlawful" or "illegal," for the essence of sovereignty lies in its power to compel obedience. Interests of internal peace and order in any country demand that the *de facto* and *de jure* sovereign should coincide and that when a clash arises between the two it should not last long. In other words, might and right should go together. A *de facto* sovereign, as soon as it establishes itself permanently, begins to acquire a legal status and eventually becomes the *de jure* sovereign.

## V. Location of Sovereignty.

One of the most difficult questions for a student of political science to answer pertains to the location of sovereignty in the State. There is a diversity of opinion among reputed thinkers on this question. Gettell notes that among these thinkers sovereignty is located respectively in :

- "(1) The people of the State.
- "(2) The organisation which has a legal right to make or amend the constitution of the state.
- "(3) The sum total of the legal law-making bodies in the government of the state." \*

The first of these views need not detain us long. In dealing earlier with the conception of popular sovereignty, we have mentioned the several criticisms to which it is open. The other two views, however, cannot be so easily dismissed. Difficulty in locating sovereignty is not a serious question as

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\* R. G. Gettell : Op. Cit., p. 98.

far as the United Kingdom is concerned, where no distinction is made between constitutional law and statute law. The English constitution is flexible and is not hemmed in on all sides as is the American constitution. In the United Kingdom, legally speaking, the Parliament including the King, Lords and Commons is supreme. It can make and unmake any laws it pleases. It is, therefore, described as the legal sovereign. The political sovereign is the people as a whole, or, strictly speaking, the electorate.

In France, neither the President nor the Chamber of Deputies nor the Senate has the legal competency to change the constitution. But the Senate and the Chamber of Deputies in a joint session are entitled to do so. Hence legal sovereignty may be regarded as resting in this joint body.

In the United States, owing to its rigid constitution, it is not so easy to locate sovereignty. Neither the President nor the legislatures, federal or state, enjoy absolute legal powers. Every act of theirs which goes beyond the limits of the constitution can be questioned by the appropriate courts. Sovereignty, therefore, is not vested in them but rests in that body which is legally entitled to change the constitution. This body is described by the constitution of the United States, Article 5, in the following words: "The Congress, whenever two-thirds of both Houses shall deem it necessary shall propose amendments to this constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments which in either case shall be valid to all intents and purposes, as part of this constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by congress."

Gettell and a few other writers take exception to the point of view which regards legal sovereignty as vested in that body which can make and amend the constitution.

Their chief argument is that "the constitution making organs act intermittently and at infrequent intervals, in some cases never,"\* while the sovereignty of the State must be constantly exercised. They, therefore, locate sovereignty in "the sum total of all law-making bodies in the government," including

- "(1) *Legislatures*. National, commonwealth, or local.
- "(2) *Courts*. In so far as they create law, not when merely interpreting or applying existing law.
- "(3) *Executive officials*. In so far as they create law, by ordinances, proclamations, &c.
- "(4) *Conventions*. When acting legally as law-making bodies, as in the case of a constitutional convention properly assembled.
- "(5) *Electorate*. When exercising powers of referendum or of plebiscite"†

According to this view, then, sovereignty includes "all the organs of government except those that are purely administrative."‡ Its chief merit, according to Gettell, is that it makes no distinction between constitutional law and statute law, or between the various parts of government. Besides, "Like the popular-sovereignty theory, it recognises that, in modern democratic states, sovereign powers are widely distributed and exercised by large numbers of the state's citizens. Like the constitution-making theory, it recognises that sovereignty is a legal concept and can be exercised only through legal channels and in a legal manner. It avoids the vagueness and loose thinking of the first point of view; at the same time it steers clear of the legal abstraction, which, in the second, by pushing sovereignty too far back, almost destroys its existence."§

\* R. G. Gettell : Op. cit., p. 102.

† R. G. Gettell : Op. cit., p. 103.

‡ Ibid.

§ R. G. Gettell: Op. cit., p. 104.

Notwithstanding the merits adduced by Gettell, the theory under review does not seem to us to be satisfactory. It rests on confusion between the State and government. The various law-making bodies are manifestations of the organic unity of the State and are not divisions of the sovereignty of the State. Their powers of law-making are delegated powers. Therefore, sovereignty does not rest in them but is vested in that body which can make and amend the constitution and allot or reallocate its powers among the various organs which express its will.

## VI. Austin's theory of Sovereignty.

The legal view of sovereignty has been best expounded by John Austin. It can be summed up under the following four simple propositions.

- (1) In every State (or "society political and independent," as Austin calls it) there is a "determinate human superior," who receives "habitual obedience" from "the bulk" of his citizens.
- (2) Whatever this superior commands is law, and without him there can be no law.
- (3) The power of this superior, which is known as sovereignty, is indivisible.
- (4) This sovereign power is absolute and incapable of limitation.

### *Criticism.*

(1) All of these propositions have been severely handled by critics. Yet, as Lord points out, every one of them contains a truth or a half-truth which is of importance.

- (a) The first proposition was attacked by Sir Henry Maine in his *Early Institutions*, where he shows that in many of the Empires of the East there is nothing to correspond with "the determinate superior" of Austin. In the Sikh kingdom of the Punjab, for instance, Ranjit Singh

exercised despotic power over his subjects. To disobey even his smallest command meant death or mutilation. Yet even he was subject to the customary laws of the community, and never "issued a command which Austin would call law." Customs are the outcome of ages and do not proceed from any "determinate person" or body of persons. From this it would appear that a sovereign in the Austinian sense is not indispensable to State existence, for it is clearly absurd to say that "wherever there is no Austinian sovereign there is either dormant anarchy or else a State of Nature." \* The real rulers of a society, says John Chipman Gray, are undiscoverable.†

(b) It is relatively easy to locate the "determinate superior" in the United Kingdom, but when the theory is applied to ancient despotisms of the East or to the constitution of the United States, it is not very helpful. Nevertheless, we agree with Lord in holding that because it is difficult to locate the supreme power in a given State we should not deny its presence altogether. "It is always possible...to find in fact as well as in theory an ultimate superior from whom there is no appeal." But the search may not be worth while.

(c) Further, the theory is altogether abstract and legal and does not take into account the philosophical aspect of sovereignty. General will to-day is regarded as the basis of most democratic States.

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\* A. R. Lord : *Principles of Politics*, p. 88.

† H. Laski : *A Grammar of Politics*, p. 56.

‡ A. R. Lord : *Ibid.*

As Garner puts it, "This superior (i.e., Austin's sovereign) cannot be the general will, as Rousseau taught, nor the people in the mass, nor the electorate, nor some abstraction like public opinion, moral sentiment, the common reason, the will of God, and the like; but it must be some 'determinate' person or authority which is itself subject to no legal restraints."<sup>\*</sup>

(d) Once more, if the sovereign's authority receives only "habitual obedience," it is somewhat illogical to regard it as "unlimited."

(2) Austin's second proposition is that the sovereign in the sense of a "determinate human superior" is the supreme law-maker. Whatever he commands is law. As regards long-standing customs and immemorial traditions which exist in every community, alongside of positive laws, the Austinian position is "What the sovereign permits he commands." Taking, for example, the English common law "which exists in customs, which are explained, modified, or expanded when the courts apply them," † it may be said that the King-in-Parliament permits the common law and as such can alter it in the way it pleases. But this is largely a theoretical power, for the sovereign cannot alter much of the common law without endangering its own safety.

If we turn to the ancient empires of the East, we find that the coercive power of the despot did not extend to the making of laws. For the most part these empires were tax-collecting and recruit-raising agencies. They did not impose laws as distinct from "particular and occasional commands." Neither did they "judicially administer or enforce a customary law." ‡ The general tenour of the lives of the people

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\* J. W. Garner: *Op. cit.*, pp. 179-80.

† R. N. Gilchrist: *Op. cit.*, p. 115.

‡ T. H. Green: *Op. cit.*, p. 99.

was regulated by authorities with which the despotic empires never interfered. These authorities were indefinite and did not reside in any determinate person or persons. In so far as they could be said to reside in any person or persons at all, they resided "mixedly in priests or exponents of customary religion, in heads of families acting with the family, and in some village-council acting beyond the limits of the family."\* Austin's theory, in brief, errs in regarding all laws as merely "commands" and in over-emphasising the single element of force.

From all this it would appear that the Austinian sovereign is not the sole creator of laws. Duguit goes so far as to say that it is not the State which creates laws, but it is laws which create the State.

(3) The third proposition is that sovereignty is indivisible.

(a) From one point of view, as Lord points out, this is an untenable proposition. In every political society there is a division of functions, and without such division no government can be conducted effectively. In the British constitution, there is not only a Legislative Sovereign, but also an Executive Sovereign and a Judicial Sovereign. The Legislative Sovereign consists of the Crown, the House of Lords, and the House of Commons. The Executive Sovereign is composed of the Crown and the ministers of the Crown. The Judicial Sovereign is the House of Lords sitting as a supreme court of appeal. These three ultimate authorities "are so far independent of each other that the executive sovereign alone continues without intermission, whilst the legislature may be dissolved

\* T. H. Green : *Ibid.*

temporarily and the supreme judiciary is not always in session."\* From this it would appear that sovereignty was divisible. In reply to it, the Austinians would say that the legislative sovereign is the real sovereign because it is habitually obeyed by the executive and the judges. But what about countries such as the United States which have a fundamental law, unalterable by the ordinary process of legislation? In such cases, we may suppose that there is "a dormant body behind the different organs of legislation, ordinary and extraordinary, which has delegated its powers and rights to them, and which theoretically can resume those powers and rights again."† But such a body which may be the People does not receive the "habitual obedience" of any one at all, "except its own obedience through its agents."‡ In defence of Austin, it may be said that functions may be divided but not will. The will is a unit. The State cannot act in a self-contradictory way. The end must be single, however composite. Interpreted in this manner, it is true that sovereignty is indivisible. All that it means is the essential unity of the State.

(b) The distinction between legal and political sovereignty also has at times been construed to mean the divisibility of sovereignty. Austin was aware of the fact that the people of England or "the numerous body of the commons" as he described them, had a share in sovereignty. But, not

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\* A. R. Lord : Op. cit., p. 89.

† " " " p. 90.

‡ Ibid.

being able to anticipate the later distinction between legal and political sovereignty, he fell into the error of believing that the people formed a part of the legal sovereign. According to Gilchrist, Austin says variously that,

- “(1) Parliament is sovereign,
- “(2) The King and Peers and electors are sovereign,
- “(3) The electorate is sovereign when Parliament is dissolved,
- “(4) That the commons have powers,
  - (a) free from trust,
  - (b) are trustees.”\*

(4) The fourth proposition is that the sovereign power is absolute and unlimited. This position has been vehemently attacked by pluralists. Even non-pluralists recognise that though the sovereign may be legally unlimited, there are political and historical limits on every side. They consider the unlimited authority and infinite right of the sovereign power as a mere abstraction of jurisprudence.

(a) Buntschli says that “the state as a whole is not almighty, for it is limited externally by the rights of other states, and internally by its own nature and by the rights of its individual members.” Bentham likewise claims that the sovereignty of the State is limited by its treaties with other States. The Austinian reply to all this is that the limitations mentioned are of a moral, and not of a legal, character and are self-imposed. “Legally speaking the State is almighty.”†

(b) The limitation imposed by customs has been pointed out earlier. In some parts of the world customs constitute a real limitation. To speak of Ranjit

\* R. N. Gilchrist : Op. cit., p. 116.

† S. Leacock : Elements of Political Science, p. 51.

Singh "permitting" customs in the Punjab is like saying that the reader "permits" the law of gravitation to operate. Ranjit Singh permitted what he could not a-ter. The Austinian reply to this criticism might very well be that the definition of sovereignty under consideration applies only to civilised States and not to half-organised or primitive communities. But the difficulty is that even in civilised States it is to some extent at least an abstraction. Sir James Stephen writes, "As there is in nature no such thing as a perfect circle, or a completely rigid body, or a mechanical system in which there is no friction, or a state of society in which men act simply with a view to gain, so there is in nature no such thing as an absolute sovereign."\* Unlimited power is nowhere existent. Even in despotic countries there are influences of various kinds affecting sovereignty. The name given to this sum of influences in an organised and independent political community is political sovereignty.

(c) A further line of attack on the absoluteness of sovereignty comes from the standpoint of federalism. It is argued that at the time Austin enunciated his theory, the modern federal State was still in its infancy. Therefore, it is contend-ed that whatever application the theory might have to the unitary state, it has little or no application to the federal State. Into the merits and demerits of this argument we need not enter here, as we have considered the question earlier in dealing with the location of sovereignty.

(d) There are some who claim that the Austinian theory

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\* Quoted by S. Leacock : Op. cit., p. 57.

of sovereignty would lead to legal despotism. Austin foresaw this criticism, but rightly maintained that there could not be a "hierarchy of supremacies nor a co-ordination of creators nor a series of sovereigns ascending to infinity." \* It is interesting to note that the practical object which Austin had in view in advocating the theory of absolute sovereignty was to aid reform legislation in England in the nineteenth century, and not to revive despotism. † Many of the conservatives of the day were opposed to the Benthamite projects of reform, and what Austin says to such critics is, in effect, "customs, divine law, &c, are not superior to or independent of State legislation. They are subordinate to it. Therefore, the supreme legislature is legally omnicompetent."

(e) Laski criticises the theory of unlimited and illimitable sovereignty from the point of view of pragmatism, pluralism, and internationalism. On the basis of actual historical experience, he holds that "no sovereign has anywhere possessed unlimited power; and the attempt to exert it has always resulted in the establishment of safeguards." ‡ Even the British Parliament, he rightly claims, does not enjoy absolute powers in actual practice. "Legally.....the King in Parliament may outrage public opinion; practically, it can do so only on the implied condition that it ceases, as a consequence, to be the King in

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\* J. W. Garner : Op. cit., p. 181.

† The view of Frederic Harrison in "On Jurisprudence and the Conflict of Laws."

‡ H. J. Laski : A. Grammar of Politics, p. 51.

Parliament." \* Looking at the question as a pragmatist, Laski comes to the conclusion that while the Austinian form is still preserved, the substance has been surrendered.

As a pluralist and internationalist, Laski wants sovereignty to be limited in the interests of other associations within the State as well as of those of internationalism. In some ways, he claims, the power of other associations is as original and complete as that of the State itself. "These associations," he writes, "are, in their sphere, not less sovereign than the State itself." † Therefore, "the conception that authority not merely is, but ought to be limited, is fundamental to political philosophy." ‡

The interests of humanity, says Laski, likewise demand the limitation of sovereignty. He is keenly aware of the fact that the idea of sovereign independent States competing with each other is inimical to world peace and world unity. Making a powerful plea for world interdependence, he observes, "Externally surely, the concept of an absolute and independent sovereign State which demands an unqualified allegiance to government from its members, and enforces that allegiance by the power at its command, is incompatible with the interests of humanity.....Our problem is not to reconcile the interest of humanity with the interest of England; our problem is so to act that the policy of England naturally implies the well-being of humanity." §

The above criticisms of Laski we shall consider separately in the next section which will deal with the various aspects of pluralism. In the meantime, we may say that the Austinian theory is sound from the legal point of view. It

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\* H. J. Laski : Op.-cit., p. 58.

† " " " p. 60.

‡ " " " p. 63.

§ " " " p. 64.

is clear and logical, although it does not go far enough. Many of the criticisms levelled against it are due to misapprehension and misconception.

### VII. Pluralistic attacks on Sovereignty.

In recent years the monistic and absolutist theory of sovereignty has been subjected to much trenchant criticism. This criticism is not of mere theoretical importance. It is tremendously practical in that it profoundly affects the question of State intervention and the limits of obedience to the State.

Pluralism had its origin in the guild system of the Middle Ages. It was not the result of a carefully thought-out theory, however. It was the outcome of the unsettled conditions that prevailed then. There was no sovereign power in the sense of an absolute and unlimited authority which could impose its will upon all the individuals and groups of individuals within a given territory. Fissiparous tendencies prevailed everywhere. In these circumstances the merchant-trade and craft guilds of the time came to enjoy considerable autonomy and assumed the character of corporations. Since the close of the Middle Ages and the dawn of the Reformation until recent times the emphasis has been in the opposite direction on a centralised national state, exercising undisputed authority over all and sundry within its territorial limits.

In recent years, however, there has been a distinct reaction against the absolutist conception of sovereignty. The reasons for the change are briefly these:

- (1) Hegel and his followers elevated the State to a mystical height and gave it not only supreme legal authority but also supreme moral authority. The State came to be viewed as "God on earth." State morality was considered to belong to a different order from individual morality. This point of view not being in accord with facts or

common sense, there soon arose a revolt against it resulting in political pluralism, which looks upon the State as one association among many having limited competence and limited authority.

- (2) The pluralistic tendency has received further impetus in recent years as a result of the relative failure of democracy and the inherent weakness of democratic organisations. It is stoutly maintained by some that the territorial representation is altogether unsatisfactory, that it does not adequately represent the diverse interests in the community, and that it squeezes out minorities. These critics, therefore, want people to be grouped according to their professional, economic, social, and religious interests. Such groups, they contend, will be truly representative of the varied interests of the people and should, therefore, be vested with final authority in their respective spheres.
- (3) The overloading of the present State organisation, resulting in a breakdown of functions strengthens the claims of pluralism. The modern State attempts too many things, and the consequence is inefficiency. As Ward puts it, "There is apoplexy at the centre and anaemia at the extremities."\* To relieve congestion at the centre and to increase social efficiency, pluralists advocate a decentralised state. "Omnipotence," says MacIver, "means incompetence."

Most pluralists do not want to abolish the State, as the anarchists and syndicalists wish to do, although the logical outcome of their theory is the abolition of the State. All that they desire is to deprive the State of its sovereignty.

\* J. W. Ward : Sovereignty, p. 86.

They believe that the doctrine of sovereignty when it arose was the logical result of civil strife in European countries (France, for example, in the days of Bodin), and as such a natural stage in the development of the State. To-day, however, when the State is comparatively free from civil strife and the emphasis is on the national well-being, it is contended that the pluralistic theory is more in keeping with facts than the monistic theory.

**1. History of Pluralism.** Gierke in Germany and Maitland in England may be regarded as beginning the pluralistic tendency in modern political thought. Both these writers look upon permanent groups within society as having a consciousness and will of their own as distinct from those of their individual members. They develop their theory in relation to corporations. Each collective association, they argue, has a personality of its own and has a share in the making and elaborating of laws. The State's part in making laws is "*principal* but not *exclusive*". The chief contribution of these writers which has come down to the present day is the real personality of corporate associations within society. Maitland holds that "there seems to be a genus of which State and corporations are species." Although both these writers deny the absolute sovereignty of the State, they do not disown its superior legal position. They regard the State as of paramount importance for purposes of co-ordination and adjustment between the various associations within society.

Much the same doctrine of the "real personality" of groups has been advocated by *Figgis* in relation to the church. He denounces the doctrine that permanent groups like the church and trade union exist only by an act of grace on the part of the State. The church, for instance, has "powers of self-development like a person." Its corporate personality is neither granted nor withheld by the State, but has simply to be recognised. Human society, says *Figgis*,

is not a "sand heap of individuals" related only through the State, but an "ascending hierarchy of groups". The traditional doctrine of sovereignty is, therefore, according to this writer, "a venerable superstition." On the assumption that the church is the exclusive guardian of the morality of the people, Figgis wants the respective spheres of the church and the State to be clearly demarcated. He has no conception whatever of secular civil morality. The general trend of his thought is that there are different spheres of action in which different groups should function exclusively. The trouble with this point of view is that nowhere in practice do we find such non-overlapping of functions; and, as Ward points out, "it is this very overlapping, fusion and conflict of human interests which generates social groups and their particular problems."\*

Claims like the above have been made by *M. Paul-Boncour* and *Durkheim* on behalf of professional and economic groupings in society. F.W. Coker summarises the views of these two writers as follows: Boncour claims that certain essential associations arise spontaneously and voluntarily, and, in course of time, become practically obligatory. They lay down rules and regulations governing their relations to members and outsiders. While these relations are originally contractual in character, they tend to become relations of a sovereign character. Paul-Boncour's conclusion is that besides a national sovereign deciding questions in cases affecting the common interest of the nation, there should be particular sovereigns to decide in matters where the special interest of some group is more important than the remoter interest of the majority. He argues that in enunciating obligatory rules only those should participate who are truly united by a community of those interests and rights with which the rules are concerned.

\* J. Ward : Sovereignty, p. 102.

*Durkheim* likewise argues for the restoration of the ancient occupational association as a definitely recognised public institution. He wants professional groups to be the basis of political representation as well as the source of economic regulation. Geographical divisions, he argues, have lost their economic and social significance. Therefore, they must be replaced by vocational divisions.

Turning from France to present-day England, we find there a series of writers advocating a distinctly pluralistic point of view in various forms. The principal among these are *H. J. Laski* and the *Guild Socialists*. In his earlier works *Laski* is more pronouncedly pluralistic than in the later. His general point of view is that the theory of "unlimited and irresponsible state is incompatible with the interests of humanity," and that "the sovereignty of the state will pass, as the divine right of kings had its day." Believing firmly in the group personality and autonomy of the social and economic groups within society, *Laski* has no hesitation in denying a pre-eminent position to the State. The doctrine of absolute sovereignty is to him a legal fiction and a barren concept. While not reducing the State to the level of a trade union, *Laski* is of the opinion that sovereignty must be shared by many groups. The State should continue to perform its co-ordinating functions, but has no right to assume omnipotence. Powers should be co-ordinate, and not hierachial. Authority should become federal. A unified and authoritative political system has no meaning.

The most important representative of *Guild Socialism* is *G. D. H. Cole*. Along with other guildsmen, *Cole* believes in the division of society into consumers and producers and advocates the co-sovereignty of these two groups. Producers are to be organised under national guilds and these guilds are to have not merely administrative, but also legislative authority. The judiciary in these circumstances is to be called upon to interpret State law as well as guild law, laid

down by the Consumers' Parliament and Producers' Parliament respectively. When there is a conflict between these two Parliaments it is to be settled by a co-ordinating agency representing the essential associations functioning in society. It sometimes takes the form of a joint committee of the two houses. This co-ordinating body is vested with "coercion" and "the judiciary and the whole paraphernalia of law and police" are placed under it. Such a position seems hardly logical on the part of one who denies the sovereignty of the State again and again. It is true that the coercive power of this co-ordinating body is strictly limited. Nevertheless, it is the ultimate determiner of the social order. Ward is right when he says, "As with Figgis, it is not authority as such they (the Guild Socialists) are repudiating, but a distribution of it, which places at a disadvantage the groups in which they are interested".\*

*Duguit* in France and *Krabbe* in Holland have approached pluralism from a totally different angle—the angle of law. According to Duguit, law is "independent of, superior and anterior to, political organisation, and is objective, not subjective" (Coker). Laws are the conditions of social solidarity. They are the outcome of social living. They are obligatory not because they are laid down or permitted by a determinate human superior, but because they state rules of law which are imperative in themselves. The business of the State is to sustain these laws. The personality of the State is a mere fiction, for the State has no real existence apart from the persons who comprise it and who are bound together by social interdependence. Law limits the State, and not the State law. Therefore, emphasis is to be laid on the duties of the State rather than on its rights. Public service rather than sovereignty is to be its essential characteristic. As Gettell remarks, Duguit is not primarily

\* J. Ward: *Sovereignty*, pp. 123-4.

interested in the political importance of social groups within the State ; his chief interest lies in placing judicial limitations on administrative action and in developing the theory of State responsibility.

“Social solidarity” is the keyword of Duguit’s political thought. It roughly corresponds to a “law of nature” prior to the State. It is the logical source of law. Duguit condenses the rules of conduct arising out of social solidarity as follows :—“Do nothing to diminish social solidarity by similitude, or social solidarity through division of labour. Do everything materially practicable for the individual to increase social solidarity in both its forms.”\* “‘Solidarity’ for Duguit is almost metaphysical. It is the source of morals, the logical basis of law and expresses the essential significance of sociological groupings.” †

In the light of all this, Duguit considers the conception of sovereignty outgrown. He does not say, however, who is to decide whether a given rule of law is in the public interest or not and how it is to be formulated into a statute law. The effect of Duguit’s theory seems to be to enlarge the powers of the courts. Law is to be socialised and the State is to be held responsible to the courts for adequate services.

Krabbe’s point of view is essentially similar to that of Duguit. “The notion of sovereignty,” he says, “must be expunged from political theory.” The only sovereignty which he is willing to recognise is the sovereignty of law. Law is independent of, and superior to, the State. It does not arise out of social solidarity, as in the case of Duguit. It is the outcome of the *sense of right* of the majority of the community constituting the State. It is thus subjective in origin. Power is not the essential feature of the State. The

\* Duguit : *Modern French Legal Philosophy*, p. 296.

† Ward : *Sovereignty*, p. 129.

characteristic mark of the State is that it is a legal community. "The State is nothing except a legal community...a portion of mankind having its own independent body of legal relations. Hence the State performs no function whatever except to impute legal value to certain interests."

Unlike Duguit, Krabbe carries this idea of law into the realm of international relations. No nation, he believes, has a natural right to lead an independent legal life. "If the interests of the international community are not furthered by an independent legal life, the claims of a nation to regulate its own communal life are invalid."\* According to Krabbe, the sense of right should extend to international affairs as well, and to the extent to which progress is made in this direction, the legal activity of existing States should contract. Eventually, Krabbe believes, the present States will become provinces of one supernational State, but before this supernational plane is reached, the "international community must pass through the phase of the idea of sovereignty."† "An independent international sovereign is a necessary step in the development of international society into an independent legal community."‡

The upshot of Krabbe's theory is to narrow down the State to a legal community and make the judge the centre of power in society. His political interest is internationalism.

Among more recent thinkers, there is a distinct pluralistic tinge in the writings of *MacIver*. In the *Modern State* MacIver advances the familiar pluralistic conception that the State is one association among many within the community, although exercising functions of a unique character. The State has the essential character of a corporation. This

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\* Ward: *Sovereignty*, p. 159.

† *Modern Idea of the State*: p. 271.

‡ Ward: *Op. cit.*, p. 161.

means that it has "definite limits, definite powers and responsibilities."\* As a corporation, "it is the subject of rights and obligations which belong to it as a unity".† The State does not embrace the whole personality of its members. "We do not live within the state, but only by means of the state."‡ Other associations being "as native to the soil of society as the state itself", the State is not their creator. It is only their guardian and agent. It has the functions of control and co-ordination. It stands for the common interest of all individuals and associations, "but not for the whole of the common interest".§ "The partial interests of a thousand associations, cultural and economic, are also parts of the common interest".|| The business of the State is merely to give "a form of unity to the whole system of social relationships."

Although the State stands for the unity and common interests of society, it does not mean that it possesses absolute sovereign authority. "The state makes rights for men, but men first make the rights for the state."¶ In the words of A. D. Lindsay, "the state .....can have control over the corporations within it only if, and so far as, the citizens are prepared to give it such power."\*\* The State has no personality of its own, for the idea of a "group mind" or a "group will" or a "group personality" in reference to corporations is an absurdity. Krabbe is right in holding that the authority of law is greater than the authority of the State. The State is more the official guardian of laws than the maker of them.

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\* R. M. MacIver: *The Modern State*, p. 473.

† Ibid.

‡ Op. cit. p. 474.

§ Op. cit. p. 476.

|| Ibid.

¶ R. M. MacIver: *Op. cit.*, p. 477.

\*\* Quoted by MacIver, p. 477.

What is needed today "is a more explicit recognition of its corporate character".\* Greater than the State is the community of which it is a part.

*E. Barker* rejects the conception of the "real personality" of groups. Nevertheless he admits the juristic claim that the permanent groups within society exist prior to the State and that each of them has a corporate character and function of its own. In his own words, "we see the State less as an association of individuals in a common life: we see it more as an association of individuals, already united in various groups each with its common life, in a further and higher group for a further and more embracing common purpose."† The State is, therefore, a group of groups or a community of communities.

*A. D. Lindsay* accepts the above view that the State is "an organisation of organisations." While other organisations have a voluntary and selective membership, the State, says Lindsay, has a *compulsive* and *comprehensive* membership. This uniqueness, however, in the judgment of this writer, is not enough to justify the doctrine of a sovereign State.

**2. Statement and Criticism of Pluralism.**—The above description of the history of Pluralism must have made it clear to the reader that the monistic and absolutist theory of the State has been assailed from different angles and that the assailants are not agreed on all the essential points. The principal lines of attack are—

(a) The State is not superior or anterior to other essential associations in society. Therefore, sovereignty is to be divided and powers are to be shared among groups. This constitutes an attack on internal sovereignty.

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\* R. M. MacIver: Op. cit. p. 479.

† Political Thought in England from Spencer to To-day, p. 177.

- (b) Externally, too, sovereignty should be limited. No state is, or ought to be, legally independent in relation to other states.
- (c) Laws are not simply the commands of a superior to an inferior. They are superior to the state and practically independent of it. This, again, is an attack on internal sovereignty.

(A) *State-sovereignty and the Autonomy of groups*—The Pluralistic claim is that it is altogether absurd to regard the state as all in all under the changed conditions of today. At a time when essential associations such as the trade union and the social club were non-existent or imperfectly developed, it was proper to regard the state as the one supreme organisation in society and to regard every other association as existing by the grace of the state. But conditions today are totally different. The powers of self-help and initiative have greatly developed, so much so, that, permanent associations, such as the Church, the family, the trade union, and the professional guild which cater to the varied interests of man mean much more to the average citizen, and evoke in him more spontaneous and greater loyalties, than the state. In the light of this new situation, pluralists claim that the state should be brought down from its high pedestal and be placed on a level with other associations. In other words, sovereignty is to be divided and shared among groups. If the individualists of a former day spoke of the individual *versus* the state, the pluralists of today speak of the group *versus* the state. They argue that "A single unitary state with a single sovereignty" is not true to the facts of today. They believe in decentralisation.

#### *Appreciation and criticism.*

Pluralism contains a large element of truth, although it grossly exaggerates it.

- (i) It is a welcome reaction against the glorification of the state. Whatever legal supremacy the

state may possess, it should be subject to moral limitations. The state is not an end in itself, free from all moral checks. In this respect, Bodin's theory of sovereignty is more satisfactory than that of Hobbes.

(ii) The pluralistic theory, writes Gettell, is a timely protest against the rigid and dogmatic legalism associated with the Austinian theory of sovereignty." Pluralists point out the growing importance of non-political groups, the danger of over-interference on the part of the state with the proper functions of such groups and the desirability of giving to such groups greater recognition in the political system. The federal organisation of government and the principle of group representation in legislative assemblies which they propose are valuable devices in government."

In her admirable book, *The New State*, Miss Follett sums up the merits of pluralism as follows:—

- (i) The pluralists prick the bubble of the present state's right to supremacy.
- (ii) They recognise the value of the group and see that the variety of our group life today has a significance which must be immediately reckoned with in political method.
- (iii) They plead for a re-vivification of local life.
- (iv) They see that the interest of the state is not always identical with the interest of its parts.
- (v) Pluralism is the beginning of the disappearance of the crowd.
- (vi) It has seized upon the problem of identity, of association, and of federalism.

In spite of these merits, we cannot accept political pluralism for the following reasons:—

- (i) The logical conclusion of pluralism is anarchistic

individualism, although pluralists as a whole do not admit this truth. To divide sovereignty is to destroy it. Even after dividing sovereignty many a pluralist is eager to assign to the state the function of co-ordination and adjustment. Our contention is that for the satisfactory fulfilment of this function, the State should have legal supremacy. The state cannot adjust the relations of associations to itself, to other associations, and to their own members, unless it is endowed with supreme legal control. If the state is to become in reality a group of groups and a community of communities, and is effectively to exercise powers of co-ordination and adjustment between the various groups in society, certain consequences naturally follow. (A) The state should not tolerate the existence of any association which is hostile to general welfare and policy. (B) It should treat all associations alike and not give a privileged position to any association because of its numbers or its power to compel exceptional treatment. (C) It should not allow any association to combine different lines of action. A trade union, for instance, should not be permitted to impose a political levy. All this means that the state should have final legal authority, whatever limitations may be imposed by law on the various organs of government.

(ii) The pluralist naively assumes that the various groups within society run along parallel lines and that there is no overlapping of functions between them. If this assumption were sound, there might be no occasion for a sovereign state. But the facts of social life are the overlapping

of functions, the clash of interests, and the conflict of loyalties. For the settlement of this state of affairs we require an authoritative state. The guild socialists forget that no sharp line can be drawn between economic and political questions. Even after advocating the co-sovereignty" of a political parliament and a national economic congress, they are obliged to resort to the much despised idea of a unitary sovereign when they set up a joint body representative of all functional associations, including the state. The pluralists do not give us any clue as to the way in which they would decide what associations are to be considered essential, and what non-essential, and on what basis representation is to be assigned to them.

(iii) The monistic enemy whom the pluralists attack is, to a very large extent, an imaginary figure. We are not apologists for Hegelian absolutism. But very few Hegelians today are monists. None of the traditional supporters of sovereignty, barring the Hegelians, claim omnipotence for the state. They acknowledge the fact that the actual power of the state is limited by the possibilities of effective disobedience, as well as by restrictions of a moral and rational character. Such admission, however, does not entitle the pluralist to draw the conclusion that the State is not sovereign and has no superior claim to a person's allegiance. Gettell is right when he says that the State may recognise moral obligations, limit the scope of its activities, and make room for local decentralisation and representation of group interest without sacrificing its ultimate legal sovereignty. None of the traditional

theorists—Bodin, Hobbes, Rousseau, and Austin, claim that “to criticise or challenge, to disobey or resist, State authority is necessarily immoral, unethical, irrational, or antisocial, or even impractical”\* All that they hold is that the State exists to enact and apply laws and that it cannot submit itself to another authority of the same kind, and yet remain sovereign. The state is not represented to be irresponsible. Only it is not responsible to any other authority similar to itself. “In brief, the state, as an organisation for law within any given territory, is superior to all other social groups within such territory.”

The main tenets of monism, as summed up by Coker, are (a) that inter-relations between individuals and groups require an organisation of unification and co-ordination, (b) that this organisation should have the right to compel membership within a given territory, (c) that it should be endowed with coercive authority to carry out its orders and (d) that there cannot be more than one organisation of this kind in a given territory. All these contentions seem so sensible that we cannot conceive of serious opposition to any of them.

(iv) The one unique feature of the State is that it is compulsive and comprehensive in its membership. Dr. Lindsay admits this uniqueness, but claims that it is not enough to constitute a sovereign State. We fail to see the logic of this position if sovereignty is interpreted as in the preceding paragraph. The State is the one all-inclusive

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\* R. W. Coker.

association. It is above all groups. It alone can rightly use force. It serves the universal interests of the members of a given society, while other associations serve partial interests. It alone can bring order out of chaos and a conflict of loyalties. The State, says Miss Follett, is a unifying agency. It utilises the whole of the individual. It acts on him not only through the various groups to which he belongs but also directly. In the striking language of Miss Follett, "The State cannot be composed of groups because no group nor any number of groups can contain the whole of me, and the ideal state demands the whole of me... My citizenship is something bigger than my membership in the vocational group. We want the whole man in politics... The ideal unified State is not all-absorptive. It is all-inclusive.. The true State must gather up every interest within itself. It must take our many loyalties and find how it can make them one. The home of my soul is in the State" This notable tribute to the uniqueness of the State from one who shows distinct pluralistic tendencies is indeed significant.

(v) Not only Miss Follett, but many other pluralists, fail to go clear over to the pluralistic goal of a non-sovereign State. This means that, in spite of their eagerness to establish a position of absolute equality for all essential associations, the logic of the situation compels them to give a supreme place to the State.\* Thus we find that Gierke and Maitland, while ascribing real personality

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\*R. W. Coker.

to groups, recognise the fact that the State is above other social bodies.

Paul-Boncour regards the State as the sole representative of general interests and national solidarity. Although he speaks of other associations as sovereigns, he gives them a place of subordination to the State. He wants the State to be a co-ordinating and adjusting organ. In particular, he says, it is the duty of the State to prevent any group sovereign from acting oppressively toward .. the public, toward other groups, or toward its own members.

Figgis likewise regards the State as a community of communities and assigns to it a distinctive function and a superior authority as an agency of co-ordination and adjustment.

E. Barker writes, "We see the State invited to retreat before the advance of the guild, the national group, the Church. Yet whatever rights such groups may claim or gain, the State will still remain a necessary adjusting force; and it is even possible that if groups are destined to gain new ground, the State will also gain, perhaps even more than it loses, because it will be forced to deal with ever graver and ever weightier problems of adjustment."\*

(vi) Pluralists do not make it absolutely clear just what it is that they want. If the State is to become an association like other associations, will the pluralists abolish compulsory taxation and compulsory citizenship? One thing which is clear is that the pluralists attack the sovereignty of the

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\*Political Thought in England from Spencer to To-day: p. 183.

State in order that the various permanent groups within society may have as large a degree of local autonomy as possible. To such a legitimate desire no monist can rightly object. It is eminently just that a larger share in the control of industry and government should be given to those who are practically excluded from such control. But "it seems neither necessary nor useful to abandon the doctrine of State sovereignty in order either to resist perversions of the doctrine or to promote the adoption of proposals for greater diversification and decentralisation in the organisation for the initiation and execution of State policy."\* True sovereignty and true functionalism are not opposed to each other. Gettell thinks it probable that as the conflicts between the State and permanent groups are adjusted and the State gradually gives legal recognition to the new forces in social life, pluralism will disappear. As a theory which corrects the excesses of the traditional doctrine of sovereignty and supplements what is lacking in it, pluralism is a valuable theory. But when it seeks to supplant it altogether, it becomes dangerous, if not futile.

It is curious that, in spite of their loud protestations against State authority, many pluralists ardently support, or at least complacently tolerate, other forms of social coercion. Even such an ardent lover of liberty as Laski declares, "Legally no one can deny that there exists in every state some organ whose authority is unlimited."

(B) *State Sovereignty and Internationalism.* For sometime past international lawyers and lovers of world peace and order have been attacking the doctrine of external sovereignty.

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\* R. W. Coker.

Some international lawyers argue that although international law has not yet acquired the status of actual law and has no penalties attached to it, it has an important sanction behind it in public opinion. They further say that the present-day tendency is in the direction of making international law a reality by providing it with a system of sanctions through pains and penalties. They insist upon the relative nature of external sovereignty, and speak of semi-sovereign States. They hold that while the State will continue to be sovereign internally, in external matters it should not be allowed to do what it pleases. They consider it utterly foolish to perpetuate the present state of affairs where any State can deny the jurisdiction of international organisations and repudiate international agreements.

Laski, who may be regarded as a powerful advocate of international peace and goodwill, finds in the present-day attacks on external sovereignty a useful ally of pluralism. The case which he presents against the perpetuation of the doctrine of unlimited external sovereignty may be stated in his own striking words: "The notion of an independent sovereign State is, on the international side, fatal to the well-being of humanity. The way in which a State should live its life in relation to other States is clearly not a matter in which that State is entitled to be the sole judge. The common life of States is a matter for common agreement between States ..England ought not to settle what armaments she will erect, the immigrants she will permit to enter. These matters affect the common life of peoples; and they imply a unified world organised to administer them ..If men are to live in the great society they must learn the habits of co-operative intercourse ..In a world-State, however it be built, and whatever the measure of decentralisation that obtains, there is no room for separate sovereignty."\*

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\* H. J. Laski: *A Grammar of Polities*, pp. 65-66.

*Appreciation and Criticism.*

We find ourselves in substantial agreement with the point of view described above. It seems to us that the need for external sovereignty is not so very urgent as the need for internal sovereignty. The time has come for the States of the world to set up a strong impartial, and universally respected international body and abide by its decisions in all matters of common interest. It may be that the present League of Nations and the Hague Tribunal are steps in that direction. If States are to surrender their sovereignty, either partly or wholly, in international relations, it may well be asked, what is to become of the doctrine of absolute, unlimited, and indivisible sovereignty? Our answer to this question is that the well-being of humanity is of infinitely greater importance than the forcible fitting of world situations into a preconceived theory in order to save its face.

Two logical explanations, however, may be given of this new situation—surrender of external sovereignty—without invoking the help of the theory of divided sovereignty. If we succeed in obtaining a unified legal control centering in a world organisation there will still be sovereignty, vested in a world sovereign State. This sovereign State may be of a unitary or federal type depending upon the nature of the relation between the world State and the component nation States. The other explanation is that offered by Bodin and a few other monists who recognise that the sovereignty of the State is limited by its moral obligations to other States. Although these obligations are self-imposed and have no legal validity, yet world opinion in favour of them may be so educated that no State will dare to violate them. Such limitations are not uncommon even in the sphere of internal sovereignty. If, in spite of these considerations, the ends of humanity require a theory of divided sovereignty, we should cheerfully submit to such a contingency.

**The point of view that we have adopted here is supported**

by Garner when he says, "If we examine the facts relating to the intercourse of states today no other conclusion is possible than that the practice no longer corresponds to the traditional legal theory, and if usage and practice are sources of international law, it follows as a consequence that the absolute sovereignty of the state in its international relations is not only a legal fiction but a baneful and dangerous dogma which ought to be abandoned, and that the notion should be expunged from the literature of international law."\*

(C) *State-Sovereignty and Law.* We have dwelt at length on the views of Duguit and Krabbe earlier. According to these writers, law is prior to the State and is superior to it. Duguit founds laws on the fact of social solidarity and inter-dependence. Krabbe founds them on a subjective sense of right. Law, to these writers, imposes limitations not only on the legislative and other organs of the State, but also on the State itself. Le Fur, another French writer, states this point of view as follows: "Far from being exclusively determined by its own will, the state is, like every other person, determined in part by a foreign power which is at the same time anterior and superior to the state; this superior power is that of the law—natural law or rational law."†

#### *Appreciation and Criticism.*

This is a point of view which we cannot very well accept. If all that this theory means is that the laws of any State are not the mere fiats of the legislature or of a superior person uninfluenced by the desires and opinions of the people, but are often coloured by popular sense of right and wrong, prevailing ideas of social justice, and the like, we have no objection to it. No organisation in any community "makes"

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\* Political Science and Government, p. 193.

† Quoted by J.W. Garner: Political Science and Government, footnote p. 199. .

the content of laws. Both in the way in which laws are made and the way in which they are enforced, they often reflect a will other than that of the formally constituted legislatures. If law were to be true to itself it should possess the essential element of reason in it. The monist has no hesitation in accepting all this. Yet he cannot accept the pluralist's definition of law.

Besides, as Coker reminds these jurists, law is something that is *prescribed*; it is not merely what a commonsense of right demands or what the community demands. Outside a determinate person or legislature, we can speak of the spirit of laws, a "common will," and the like, but cannot speak of laws in their generally accepted connotation. "Social solidarity" and sense of right" are incapable of giving us specific laws which can be interpreted and enforced by the judges.

Furthermore, the theory under consideration seems to re-open the question of natural law and natural rights from which political theory has been comparatively free in recent times. To revert to natural law and natural rights will lead us into a labyrinth out of which political theory cannot easily find its way out.

Finally, there is evidence to show that when these jurists attempt to limit the sovereignty of the State by means of law, they really have in mind the organs of government, and not the State itself.

### 3. Conclusion.

(a) Pluralism, as said already, may be regarded as a welcome reaction against the excesses to which the traditional theory of sovereignty has been carried by such of its supporters as Hegel. To attribute moral sovereignty to the State, as Hegel does, is a dangerous procedure to adopt. The State is no doubt legally supreme. But it has no right to free itself from all moral obligations to its citizens and to other States. The Hegelian idea that what the state commands is

necessarily right is a mistake. In so rejecting the State absolutism of Hegel, however, we do not necessarily become pluralists.

(b) Pluralism has rendered a great service to modern political theory by inviting the pointed attention of States to the reality of group life. There is no doubt that economic, professional, social, and religious groups play a vital and unique part in the life of the community. Therefore, to regard them as existing merely by the grace of the State is nothing short of insolence. It is only fair that permanent associations functioning in society should be given as large a degree of local autonomy as possible to manage their own affairs. They should also have an effective share in moulding the general policy and laws of the State. But all this does not mean that the State should be reduced to a level of equality with other associations. The State should continue to be in a class by itself. It should remain supreme.

(c) Even after granting complete internal autonomy to the essential associations in the community, we require a superior organisation for purposes of co-ordination and adjustment. If the State is only one association among many associations having similar power and similar status, it is difficult to see how it can satisfactorily fulfil its unique function of adjustment and adjudication. Membership in the State is *compulsive* and the authority exercised by the State is comprehensive. Without these unique qualities, the State cannot very well maintain conditions of justice and social welfare. Coker is right when he says that the non-political social groups cannot thrive and attain their ends without the distinctive services of the State.

(d) The innumerable groups which function in society do not exhaust all the services required for the well-being of man. They serve only partial interests. The State is the only organisation which is competent to deal with the universal needs of the members of society. Thus it is that we

find that the care of common interests is a special function of every civilised State.

(e) If we reject the monistic theory of sovereignty, the only logical position to take is that of the anarchists and syndicalists. Pluralism attempts an impossible middle position. Pluralistic doctrines are in the long run anarchistic doctrines.

(f) If the term "sovereignty" is open to abuses and cannot be freed from the kind of absolutism assigned to it by Hegel, the term "supremacy" or "final authority" will serve just as well from the point of view which we have adopted. The view adopted in these pages has more in common with the theory of Bodin than with that of any of the traditional supporters of sovereignty.

(g) The conclusion to which we have been led may be stated in the words of Sabine as follows: "For my own part, then, I must reserve the right to be a monist when I can and a pluralist when I must."

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## CHAPTER XIII.

### UTILITARIANISM IN POLITICS.

*Utilitarianism* is essentially an English school of thinking. It played a notable part in England in the nineteenth century, particularly in the earlier half, in effecting reforms of a far-reaching character. Even to-day it is far from dead. Its influence is found to continue so long as there are social grievances to be redressed. It is a wholesome corrective to a blind worship of the State and to the conception of abstract natural rights.

#### I. Statement and Criticism of Utilitarianism.

Utilitarianism is primarily an ethical theory based upon the psychological doctrine known as Hedonism. According to the teaching of Hedonism, every man, as a matter of fact, seeks pleasure and avoids pain. Other motives may enter into one's calculation, but the ultimate motive is that of pleasure *versus* pain. The Hedonistic teaching is by no means modern. It goes back to the Greek times, especially to the teachings of Aristippus, the founder of the Cyrenaic school, and, in a modified form, to the teachings of Epicurus. While modern Hedonism differs widely from the ancient, both forms regard pleasure as the guiding principle. Earlier hedonism was egoistic in character, while the modern is altruistic. Utilitarianism bases itself on the latter form. Hence it is sometimes called altruistic or universalistic hedonism. Its goal is the greatest happiness of the greatest number, or, simply, general happiness ; and the scoffer adds, "the greatest number is one."

It is generally admitted to-day that the psychological and ethical foundations of Utilitarianism are unsound. Man

is no doubt self-interested, but self-interest is not his only characteristic. Self-regarding and other-regarding impulses are present in all men in varying degrees. To use the language of Henry Drummond, there is in man a struggle not only for one's own existence but also for the existence of others. Therefore, to build a psychological and ethical theory on one aspect of human nature, to the exclusion of others, is seriously defective. Bentham evades the issue when he claims that every man is self-interested, but that in his own case self-interest takes the form of doing good to others. Genuine altruism is possible for man.

To the hedonist, happiness consists in sentient satisfaction. Sensibility, as James Seth points out, is a large and important element in human life. But it is not the ultimate and characteristic element. Man is not mere feeling. He also possesses a rational element. "The hedonistic theory of life purchases its simplicity and lucidity at the expense of depth and comprehensiveness of view. Its formula is too simple."\* To quote the same writer again, hedonism cannot interpret the qualitative, but only the quantitative aspect of the good. The only distinction it can establish is that between the 'greater' and the 'less'; it has no place for the 'higher' and the 'lower.' It points to the *greatest*, but not to the *highest good*.

In making the above criticisms, we do not forget that Utilitarianism claims to make a powerful appeal to the altruistic impulses of man. But our contention is that, in so doing, it is inconsistent with itself. Universalistic hedonism is a contradiction in terms. If a thing is 'universalistic' it cannot be hedonistic; and, conversely, if it is hedonistic it cannot be 'universalistic'. Pleasure is individualistic in nature. It is a subjective experience. Therefore, to speak of general happiness as meaning general pleasure, as the Utilitarians do, is meaningless. A knows what gives him

\* J. Seth : Ethical Principles, p. 115.

pleasure and B knows what gives him pleasure, but neither A nor B knows what general pleasure is like. We can sympathise with another person's pleasure or pain. But we ourselves cannot feel it. We cannot experience it. Another respect in which pleasure is individualistic is that the individual himself must be the judge of his happiness. Only he can tell whether a thing gives him pleasure or not. But the moral criterion of the Utilitarians is general happiness. Our contention is that there is no logical transition from pleasure as end to general happiness as end.

Thus, in developing his theory, the Utilitarian was faced with the opposition, why should the individual promote the happiness of the community as a whole? J. S. Mill's answer is that the individual's pleasures are bound up with the pleasures of others—as in the case of the pleasures of parents and children. Since so many of our pleasures are intimately connected with the pleasures of others, Mill argues that it is not always necessary to put pressure on the individual. Bentham's answer, however, is different. He recognises the fact that the individual often seeks his pleasure at the expense of the happiness of the group. Nevertheless, Bentham's passion for "general happiness" is so great that he has recourse to the doctrine of sanctions to force the individual now and then at least to sacrifice his happiness in order to promote the happiness of the group. These sanctions are four in number, viz., the physical, the political (or the law of the land), the moral (or the pressure of public opinion), and the religious.

Although Utilitarianism is an unsound ethical theory, it has been instrumental in bringing about a large number of valuable reforms in practical politics. How do we account for this seeming contradiction? The answer is to be found in the fact that the Utilitarian performs a somersault when he passes from ethics to politics. As an ethical thinker, he interprets general happiness to mean general pleasure. The

end of conduct is to him the largest number of pleasurable sensations possible for the largest number of people. Pleasures, he holds, are capable of being added up, since they differ in quantity only, and not in quality. (According to J. S. Mill, however, who is not an orthodox Utilitarian, pleasures differ both as regards quantity and quality). In the words of Bentham, the leader of the school, "quantity of pleasure being equal, push-pin is as good as poetry." The difficulties encountered in summing up pleasures and in giving an intelligible meaning to the term "general happiness" as meaning general pleasure are too patent to need any comment. The Utilitarian himself is not too eager to undertake this fruitless task.

As a political thinker, the Utilitarian interprets general happiness in a loose manner to mean general well-being or social welfare. He minimises the conception of pleasurable feelings and fastens attention upon utility. It is obvious that terms like "social welfare" and "utility" are of such a practical character that anybody using them as the foundation of his political programme is bound to do immense good. Thus we find that it is the inconsistency of the Utilitarians and the interpretation of their end which accounts for the great good which they accomplished in the realm of practical politics. Their political theory was a theory of government, rather than a theory of the State.

## II Appreciation of Utilitarianism.\*

Our criticism of utilitarianism as an ethical theory does not prevent us from giving due praise to it in the political field. Utilitarianism represents interest in the welfare of mankind. To this interest it combines practical efforts to improve the conditions of human life on rational principles. It believes in the possibility of raising the condition of the masses

\* Condensed largely from W. L. Davidson : Political Thought in England. The Utilitarians, chapter 1.

through effective state legislation. All utilitarians have at heart the general welfare. Their first and great concern is human life, human activity, human well-being. They are the strenuous opponents of tyranny and injustice, and the champions of individual freedom. They are opposed to all "sinister" interests. Hence Utilitarianism is emphatically practical. It is reformatory. It is simply another name for humanism.

Utilitarianism is often unjustly criticised as the utility theory or expediency philosophy. Utility means serving a purpose or end. In popular conversation, it often means a low purpose or end. The Utilitarian conceives man not only as an individual, but as an individual who is by nature social. "Utility for him means what is best for all the elements of his nature, and what can most effectively promote his full and ultimate good, and the full and ultimate good of his fellows." The Utilitarian doctrine is expressed in such phrases as "the greatest happiness of the greatest number," "enlightened benevolence," and "general happiness."\*

In like manner, Utilitarianism has sometimes been regarded as synonymous with materialism of the worst type. In order to avoid misconceptions, it is proposed that we should substitute such terms as "welfare" and "well-being" for "Utility" and "happiness." Welfare covers every conceivable element that goes to determine and constitute man's happiness. The only objection to this proposal is that it materially deviates from the hedonistic starting-point of Utilitarianism. If the Utilitarians are prepared to abandon their connection with Hedonism, there should be no hesitation in accepting their theory. Thus, we note that ideal Utilitarianism rejects Hedonism and combines the best elements of Idealism and Utilitarianism. It links up the development of human personality with the well-being of society. T. H.

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\* W. L. Davidson : Op. cit., p. 13.

Green, in whom we observe this new tendency and who is like Mill on many questions, argues that the Utilitarian, beginning as he does with Hedonism, has no right to the test of social well-being. "Defining his end as the realisation of a permanent self-satisfaction, Green escapes the difficulties attending the balancing of pleasures and pains." Commenting upon Green's treatment of Utilitarianism, D. G. Ritchie writes "There is no reason why the Idealist, after making clear his objections to Hedonism, should not join hands with the Utilitarian." Green's ethical system, says the same writer, is Mill's Utilitarianism *plus* a secure basis and a criterion.

Reverting to Utilitarianism at its best, happiness, says the Utilitarian, cannot be obtained independently of regard to others, since it is a mistake to conceive an individual as simply an individual. The individual's happiness, he believes, is necessarily dependent on the existence and organisation of the State. Customs, law, and legislation should encourage as well as limit the individual's attainment of happiness, for happiness is not a mere synonym for selfish indulgence. The supreme consideration of the legislator, says the Utilitarian, should be the welfare of people in general. Proper legislation has a negative and positive aspect. Negatively, it should get rid of degrading or untoward circumstances. Positively, it should put favourable inducements in their places.

It is sometimes said that Utilitarianism lacks in ideality. This is not a valid charge. "The vision of the future improvement of society and of the regeneration of mankind is precisely what inspires and stimulates him and upholds him in the face of difficulties and seeming failure."\* The ideals that the Utilitarian cherishes are of an essentially practical and human kind. The ideals rejected by him are those which appear to him either undesirable or unrealisable or

\* W. L. Davidson : Op. cit., p. 20.

both. He is neither a fanatic nor a dreamer. His feet stand on solid ground.

Utilitarianism is founded on experience. It appeals to experience as the ultimate test. 'Consequences are everything to the Utilitarian. He regards experience as the source and origin of knowledge and the ultimate criterion of truth. He is opposed to mere abstraction or speculation.

Utilitarianism is thus an intensely human and intensely practical philosophy. It is not a new ethical theory. It "enters the realm of politics and aims at finding itself embodied in state legislation".\* "It is directly in touch with the living movements and interests of men."† "Time has corrected much, has outgrown much, has discarded much; but the keen resentment of injustice that characterised the Utilitarians, and their ever-active sympathy with the poor and the oppressed, and their enthusiasm for human welfare are strikingly apparent still".‡ The Utilitarians had their defects and their failures, "but their face was ever towards the future."§

### III. Utilitarian Thinkers.

The leader of Utilitarianism in England was Jeremy Bentham. He was extremely fortunate in having about him a band of able and devoted men who gave themselves to the task of applying the Utilitarian creed to the various aspects of social life in England. These were James Mill and his son John Stuart Mill, the historian Grote, the psychologist Alexander Bain, the jurist John Austin, and the economist Ricardo. With one partial exception, all of them were radical philosophers and men of affairs. The England of their day was seething with social abuses and gave them ample opportunity for the exercise of their "passion for improvement."

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\* W. L. Davidson : p. 29.

† Ibid.

‡ W. L. Davidson : Op. cit., pp. 249-50.

§ Ibid.

1. *Jeremy Bentham* who lived from 1748 to 1832 laid the foundations of the Utilitarian School of thinking and played a conspicuous part in removing injustice and bringing about lasting reforms. For the great task which he undertook, Bentham was particularly fitted by his thorough legal training, sound common sense, and warm sympathy with the down-trodden and the suffering. The keynote of his philosophy is "Nature has placed man under the government of two sovereign masters, *pain and pleasure*... ....They govern us in all we say, in all we think : every effort we make to throw off our subjection, will serve but to demonstrate and confirm it." The principle of utility, says Bentham, recognises this subjection, because it approves or disapproves of every action whatsoever, according to the tendency to promote or oppose happiness. This principle he later describes as "the greatest happiness principle." In the apportionment of lots of happiness, the principle to be applied, he says, is "each to count for one and no one for more than one." In other words, there should be absolute impartiality in the treatment of individuals.

According to Bentham, pleasures differ in intensity, duration, certainty, and propinquity but not in quality. This means that we cannot regard one pleasure as "better" or "higher" than another. Pleasures should be capable of being summed up in quantity or bulk. All this seems clearly absurd to us. But the practical object which Bentham had in view was to prevent well-intentioned people from prescribing for others what would constitute their "real pleasures." The Benthamite doctrine is undoubtedly narrow and psychologically false. Nevertheless as Ivor Brown remarks, it "has an immense value because it denies the infallibility of the superior person who endeavours to foist his own morality or his own type of happiness upon others whom he believes to be the pitiful dupes of ignorance."\*

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\* Ivor Brown : English Political Theory, p. 99.

"Benthamism, shorn of its crudities, is simply humanism."<sup>\*</sup>

The primary concern of Bentham was the good or welfare of the community. He believed that his principle of utility could be applied with advantage to all social questions, and particularly to constitutional, legislative, and law reform. "He had a living and practical interest in view, and was not merely concerned with barren speculative theory."<sup>†</sup>

At the time that Bentham appeared on the scene as a great reformer and thinker, the theory of natural rights and the pompous generalisations of Blackstone regarding the greatness of the English constitution and the English law held the field. Upon both of these Bentham poured his scorn, and exposed them to merciless criticism. Natural rights he described as "simple nonsense : natural and imprescriptible rights rhetorical nonsense—nonsense upon stilts." For the theory of natural rights he substituted the principle of utility. Although Thomas Paine, the staunch advocate of natural rights, and Bentham differed violently in their philosophical outlook, both of them advocated many liberal measures in common. As Ivor Brown writes "two men can scarcely ever have moved towards the same destination by such very different roads."<sup>‡</sup>

In his first work of any importance, the *Fragment on Government*, published in 1776, Bentham bitterly criticised Blackstone who praised the English law as a slow, natural growth in accordance with divine providence. "Bentham showed that it was a shameless tyranny, which worked only for the misery of the weak and poor, an elaborate mechanism for helping the educated and the powerful to keep down the ignorant and the oppressed."<sup>§</sup> He further attacked Blackstone

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\* Ivor Brown : English Political Theory, p. 102.

† W. L. Davidson : Op. cit., p. 48.

‡ Ivor Brown : Op. cit., p. 98.

§ Op. cit. p. 102.

for basing political obligation upon an original social contract. He argued that there was no such contract in the past and that, even if there was one, it did not bind the present generation. The only valid reason for obedience is utility, or the general good. Governments exist because they are believed to promote the happiness of those living under them. In Bentham's own characteristic language, "The probable mischiefs of obedience are less than the probable mischiefs of disobedience." Thus, as Dunning points out, among the venerable principles and practices of conservative England's law and politics, Bentham became "a veritable bull in a China shop" \*

*Theory of Government* :—Far from extolling the English constitution, as his contemporaries had done, Bentham attacked it in right earnest. He pleaded for universal manhood suffrage, subject to the test of ability to read, annual parliaments, and vote by ballot. The object of all his proposals was "to secure the real and effective representative of the people" and to prevent political corruption. It is noteworthy that two out of these three proposals have since become law. The plea for annual parliaments has been dropped, and is not likely to be revived. Bentham was eager that democracy should have its full sway. With this object he further recommended the equalising of electoral districts, and the freedom of the press. He went still further and attacked the utility of the House of Lords and of monarchy on the ground that the interests of these institutions were not compatible with the interest of the people at large. He was convinced that a single-chambered legislature, renewable every year was most in accord with the democratic principles. Bentham's faith lay in a Republic, which he thought would be conducive to "both efficiency and economy and the supremacy of the people."

By means of his *Constitutional Code*, he hoped to better "this wicked world by covering it over with Republics." Neither monarchy nor limited monarchy, in his view, secures maximum happiness. "It is only when democracy rules that the interests of the governors and the governed become identical, for the greatest happiness of the greatest number is then the supreme end in view."<sup>\*</sup>

*Legislation*—It was in this field that Bentham made his greatest contribution. On the publication of his *Principles of Morals and Legislation*, he became a sort of "new Moses" of legislation. Statesmen from different parts of the world looked to him for practical guidance. He was peculiarly fitted to play the role of an ideal legislator in the Platonic sense; for he was a man above parties and private interests, entirely devoted to the common well-being. The ends of legislation are, according to him, security, subsistence, abundance, and equality. In simple language, the object is the good of the people. If laws are to be obeyed, says Bentham, it is necessary that legislation should carry the people along with it. Unwilling obedience and general dissatisfaction mean ultimate revolution. Therefore, in order to secure cheerful obedience the reasons for legislation should be made plain and obvious to the people. By means of fear and reward people should be checked from pursuing their own selfish interests.

The number of practical reforms which Bentham advocated are a legion. The principal among them, as summarised by Davidson, are: the reform of the corrupt and restricted parliamentary system; a thorough-going municipal reform; the humanisation of the terribly cruel criminal law of the time; the improvement of prisons and prison management; the abolition of imprisonment for debt; the elimination of the usury laws; the repeal of religious test; the reform of the poor law; the suppression of "sturdy beggars"; the utilisation of

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\* W. L. Davidson: *op. cit.*, pp. 78-79.

able-bodied paupers; the training of pauper children; the establishment of a vast scheme of national education; the institution of "frugality banks" (now known as savings banks) and friendly societies; the forming of a code for merchant shipping; the protection of inventors; the encouragement of local courts; a comprehensive system of health legislation; the creation of public prosecutors and of advocates for the poor; a thorough-going revision of hereditary rights; the supervision of scientific and philosophical foundations; and the recall of public officials. It is needless to add that many of the reforms which Bentham ardently pleaded have since been incorporated into the laws of various lands.

*Law Reform.*—Bentham aimed at being a great law reformer. He was eager "to see justice administered, and happiness secured to the deserving and the oppressed."\* With this object he criticised existing laws and the existing machinery for the execution of them. But he was never a mere destructive critic. His object was primarily construction, and criticism was simply a means to this end. He applied himself not only to the laws of different European countries, but also to international law, and laid down principles of great value. Sir Henry Maine pays a generous tribute to Bentham's place in the history of judicial reform when he writes, "I do not know a single law-reform effected since Bentham's day which cannot be traced to his influence."

Bentham realised that the laws of the day were in a chaotic condition and took upon himself the task of codifying them, but no encouragement was given to him in his own country. Encouragement came, however, from foreign lands, particularly from France and Russia. Applying his utilitarian principles to the laws of these countries, Bentham demonstrated how his theory would work in concrete instances.

From the codification of laws Bentham turned his

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\* W. L. Davidson: *op. cit.*, p. 92.

attention to the form in which laws were framed. He had no patience whatsoever with the unnecessary technicalities, redundancies, and obsolete phraseology fondly indulged in by framers of laws. Laws, he said, must be expressed in plain and short easily-followed sentences. They should be put within the easy reach of those who are held responsible for obeying them. Bentham scathingly criticised the mode of administering laws, which pressed most heavily on the poor. He condemned the dilatory methods of judges which involve unnecessary expenditure to the parties concerned, as also the miscarriage of justice arising from the technicalities of law. He had scant respect for the judges and heartily supported juries as a check on their despotism. "He insisted on individual responsibility in all judicial offices, and, as a corollary, advocated the propriety of only one judge to a tribunal; plurality of judges trying a case meant weakened responsibility in each."\*

*Education*.—Bentham had unswerving faith in the power of education to improve mankind. He sketched two systems of education—one for the pauper children and another for the upper class children. His system of teaching started from the position: "Begin with what is useful—what is most likely to be of service to the pupil in his after career in life."† He laid down the modern principle: "Teach first the things that are easiest to learn, i.e., pay regard to the learner's capacity and do not force him contrary to his aptitude and his natural inclination."‡

*Punishment and Prison Reforms*.—To this question Bentham gave his most careful attention. Applying the utilitarian principle to it, he held that the chief end of punishment was to prevent crime. It should not be merely vindictive.

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\* W. L. Davidson: *Op. cit.*, p. 97.

† W. L. Davidson: *Op. cit.*, p. 89.

‡ W. L. Davidson: *Op. cit.*, p. 90.

Bentham recognised the pleasure of revenge, but held that it should be given a minor place in the award of punishment. Punishment, according to Bentham, should be exactly suited to the purpose. It should be neither more, nor less. It should secure the good of the community. As a Utilitarian, Bentham always kept before him the practical effects of punishment. If capital punishment was necessary for the safety and security of society it was justifiable, otherwise not. Whether capital punishment was to be administered in cases other than murder, Bentham held, should be determined by considerations of utility, *i.e.*, their effect upon the general good. The execution of justice should, as far as possible, be exhibited to the public eye—so that prospective evil-doers seeing it would be frightened away from committing the crime.

On the whole, Bentham's emphasis is on the deterrent theory of punishment. But this does not exclude the reformation of the criminal, which Bentham regards as "a part of the calculation of the balance of consequences in meting out punishment." Bentham believed that a great many criminals and evil-doers were capable of improvement and that they could be restored to society as useful and self-respecting members. On the strength of this belief he advocated many principal reforms for the reformation of the criminal and for the teaching of industries while in confinement. He evolved a scheme known as the 'Panopticon' for the systematic supervision of the daily life of the convicts. The prison buildings were to be arranged in such a fashion (semi-circular) that the superintendent could have a view of all the cells from his residence. The scheme combined careful supervision and discipline with sympathy and improved environment. The criminals were to be taught not only useful trades but were also to be given elementary education. Moral and religious training should be brought to bear upon them. Ideals should be set before

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\* W. L. Davidson: *op. cit.*, p. 101.

them in such a manner that they would lend their active sympathy to the reforming of their character. On their discharge criminals were to be provided with employment until they were able to regain the confidence of the public and stand on their own feet. Although many of these reforms did not come into being in Bentham's day, the "vast reforms of prisons and penitentiaries that have taken place since his day, and the institution of reformatory and industrial schools, derived impulse from him and have proceeded on the principle that he laid down."\*

Another respect in which Bentham was in advance of his day was in his belief that punishment should fit the criminal and not the criminal the punishment. He believed that punishment should be graded according to the nature of the crime, the previous character of the offender, his parentage, the circumstances in which the crime was committed, the motive of the criminal, and the kind of persons to whom the injury was done. Punishment was to be certain and impartial in its imposition.

The above detailed sketch of the conspicuous part played by Bentham in the early part of the nineteenth century in ameliorating social condition will serve to show the reader the tremendously practical and reformist character of Utilitarianism. It should be remembered, however, that the principle underlying these reforms was not "general happiness", but general welfare or social expediency or utility in general. Of Bentham it is rightly said that he enquired of all institutions whether their utility justified their existence.

2. *James Mill* (1773—1836) was a devoted follower of Bentham to the end of his life. He was "the most strenuous, perhaps the ablest and the most uncompromising disciple that Bentham had."† He had the keenest interest in social and political

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\* W. L. Davidson: Op. cit. p. 111.

† W. L. Davidson: Op. cit. p. 114.

questions and was faithful to the inductive and experimental method of Utilitarianism. Like Bentham, he was a firm believer in the value of education for both the lower and higher classes. Like Bentham, also, he showed a keen enthusiasm for law and law-reform. He had no great objection to monarchy. He regarded a sound representative system as a check upon the self-interest of governments. While not advocating the abolition of the House of Lords, as Bentham did, he proposed drastic measures for the curtailment of its power, closely anticipating the 1911 Act. He believed that political power, when vested in the middle rank of society, would be most conducive to order and progress. In every way, as Davidson remarks, James Mill was "the leader of the Utilitarian Radicals after Bentham, and the chief operative force in effecting the practical reforms of the school."\*

3. *John Stuart Mill* (1806-73), the son of James Mill, is better known of the two Mills. He softened down the harshness of Benthamite ethics, and, in so doing, "he made Utilitarianism at once more human and less consistent."† He admitted that pleasures differed not only in quantity, but also in quality. In his own oft-quoted words, "It is better to be a human being dissatisfied than a pig satisfied, better Socrates dissatisfied than a fool satisfied. And if the fool, or the pig, is of a different opinion, it is because they only know their own side of the question. The other party to the comparison knows both sides." Mill once again differed from Bentham in narrowing the gulf between self-interest and general happiness. "The Utilitarian standard", says he, "is not the agent's own greatest happiness, but the greatest amount of happiness altogether." "As between his own happiness and that of others, Utilitarianism requires him to be as strictly impartial as a disinterested and benevolent spectator. In the golden

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\* W. L. Davidson, *op. cit.*, p. 142.

† Ivor Brown: *English Political Theory*, p. 119.

rule of Jesus of Nazareth, we read the complete spirit of the ethics of utility. To do as one would be done by and to love one's neighbour as oneself, constitute the ideal perfection of Utilitarian morality.\* While Bentham recognised only external sanction for constraining the individual to promote the general happiness, Mill admitted both external and internal sanctions. He held that every man possessed "a feeling for the happiness of mankind" and that he therefore should desire and promote the general happiness. His reasoning is "Since A's happiness is a good, B's a good, C's a good, etc., the sum of all these goods must be a good."†

Mill was as much interested in social reform as in philosophical speculation. In his famous essay on *Liberty*, published in 1859, Mill stood forth as the undaunted champion of individuality. The book is an able and well-reasoned vindication of freedom of thought, speech, and action. While an ardent believer in democracy, Mill was afraid that it tended to crush out all individuality and originality. Accordingly he favoured the widest possible freedom in the spheres of thought, speech, and action. He believed in the toleration of opinions and in complete freedom of discussion. It was his conviction that truth would eventually win in the struggle of ideas. He really taught the survival of the fittest in the realm of ideas. Social vitality, he believed, should precede social calm. He argued that individuals and associations of individuals should be given complete freedom of action as long as their conduct did not seriously interfere with the interests and rights of others.

In the sphere of practical politics, Mill was a Radical. He was an ardent champion of the rights of women and wanted to "emancipate" them from the "subjection" of men. He believed that differences between sexes were not fundamental

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\* J. S. Mill: *Utilitarianism*, ch. ii.

† J. S. Mill: *Letters*, II, p. 116.

and inevitable. As a Radical member of Parliament from 1866 to 1868 he strenuously advocated the interests of labouring classes, women suffrage, and land reform in Ireland. He opposed all class interests and one-sided legislation. He believed that minorities were not adequately represented in the British Parliament and so advocated the system of proportional representation associated with the name of Hare. While favouring universal suffrage for all tax-payers, Mill advocated plurality of votes for men of superior intellect and high character. He opposed payment of members of Parliament in the interests of the purity and efficiency of government, and condemned the secret ballot on the ground that it tended to promote selfish and irresponsible voting. While maintaining the superior legislative authority of the House of Commons, Mill believed that the House of Lords, containing as it did men of legal ability, should be entrusted with the task of framing bills to be brought before Parliament. He favoured compulsory education provided by the State, although he feared that it might result in turning out people after a single pattern determined by the governmental bureau. It was a "mere contrivance," he said, "for moulding people to be exactly like one another."

In the economic field, Mill was far from being a bigoted individualist. He approved of extensive State action, when it was in the interest of social welfare. In his later years he looked forward to the socialistic ideal when there might be "a common ownership in the raw material of the globe, and an equal participation of all in the benefits of combined labour." He combined political liberalism with economic socialism. As Ivor Brown puts it, "Mill's political ideals are perfectly compatible with socialism, so long as that socialism is based on a philosophy of individual welfare."\*

In all that he wrote and said, the primary end which

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† Ivor Brown: *op. cit.*, p. 129.

Mill had before him was the promotion of social well-being and the preservation of individuality. He threw the entire weight of his support on the side of progress and believed in the possibility of improving mankind through intelligent human effort. As a good Utilitarian, he laid stress on happiness as the ultimate standard of all conduct, but at the same time regarded freedom as a vital necessity. The liberty for which he so strongly pleaded was the liberty of individual men and women, and not of groups and abstractions. His chief merit lies in the fact that he regarded every social question in terms of human beings. Although one can easily point out loop-holes in his social and political thought, there is no gainsaying the fact that it contains elements of permanent value. "That is why the Utilitarian creed though long discredited, has in it the prospect of immortality."\*

Other Utilitarian thinkers need not detain us long. The greatest contribution made by *John Austin* (1790-1859) is his elaboration of the philosophy of law from the side of jurisprudence. In the field of practical politics he had no burning zeal for democratic government. He was distinctly conservative and was opposed to parliamentary reform in 1859. *George Grote* (1794-1871) was an ardent Benthamite. He was a practical politician as well as a political philosopher. He advocated vote by ballot. He "was an eager champion of the extended franchise."† *Alexander Bain* (1818-1903), the famous psychologist, gave Utilitarian ethics the scientific form that it required. He made "experience" the watchword of his associationist psychology.

"To the Utilitarian Radicals, thus passed in review, Britain owes an immense debt. Their views held sway for the greater part of the nineteenth century, and the result was

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\* Ivor Brown: *Ibid.*

† W. L. Davidson: *op. cit.*, p. 238.

awakened interest in active politics, social reforms, and beneficent legislation to an extent that had previously been unthought of. The benefit is being felt to-day.....They carried forward their principles step by step, each great thinker adding something of permanent value. Progress was their watchword, and their enthusiasm for liberty and the public good supplied the driving power. That is what the present time inherits from them. They supplied to the world no complete philosophical system, but certain well-defined principles that have stood the test of results, and that still allow of indefinite beneficent application."\*

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## CHAPTER XIV.

### IDEALISM IN POLITICS.

#### I. The Idealistic Tradition in Politics.

The idealistic theory of the state is known by various names. Some call it the absolutist theory, some call it the philosophical theory, and still some the metaphysical theory. MacIver goes to the extent of describing it as the "mystical" theory. Whatever the name may be, the idealistic tradition has had a long, though somewhat broken, history. Its earliest traces are found in the writings of Plato and Aristotle. These Greek thinkers, along with many others of the time, regarded the State as natural and necessary. To them the State was all in all, and apart from it man could not attain the highest possible perfection for him. Aristotle held that the State first came into being in order to meet the needs of mere life, but was continued through the necessities of a moral life. To both Plato and Aristotle the State was supremely an ethical institution. The true State was a "partnership in a life of virtue."

This way of looking at the State from the moral point of view and of approaching political theory through ethics has profoundly affected later idealistic thinkers. Another respect in which Greek philosophy has left a deep impression on some of the recent idealists is in the practical identification of the State with society. This tendency is particularly marked in the thinking of Bosanquet. A third way in which Greek thought, particularly the thought of Plato, has influenced later idealists is in conceiving the State as an organic unity. The idealist starts from the position that the State is a central social system, in which the individual must

find his proper place. The individual has no meaning or significance in and of himself. Whatever importance he has is in relation to the organic whole of which he is an intrinsic part. The sharp contrast between the individual and the state with which we are all too familiar to-day was unknown to the Greek. The social life was to him a life of citizenship, and the perfect life was the life of a citizen. The individual apart from the state was to him "an unethical abstraction."\*

Even in the Greek period the high ideal of the state held by Plato and Aristotle was not universally accepted. Greek ethics, as James Seth points out, "close with the cry of Individualism and Cosmopolitanism," † as seen in the teachings of the Epicureans and the Stoics respectively. During the Middle Ages the Church to a large extent displaced the state, and controversy raged over the respective jurisdiction of the Church and state. The conditions prevalent during this period—struggle between the Church and state, monarchy and feudalism, etc.,—were not conducive to the fruition of the best in Greek thought. Thus for nearly a thousand years Greek political philosophy was practically dormant. With the Renaissance and the Reformation, there came a revived interest in Greek learning. Sir Thomas More, in his *Utopia*, was considerably influenced by Plato's *Republic*. But what interested him in Plato was his Communism rather than his idealistic teaching. The Reformation doctrine of individual importance gave the individual a new independence, paving the way for the doctrine of personality, which is the cornerstone of modern idealism. The period following the Reformation was marked by individualism, nationalism, competition, and mercantilism, the latter two "combining to create the irresistible invasion of capitalism." ‡ During this

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\* James Seth: *Ethical Principles*, p. 288.

† J. Seth: *Op. cit.* p. 289.

‡ J. Brown: *English Political Theory*, p. 26.

period, too, the idealistic tradition could not make much headway. The doctrine of the divine right of Kings held the field for a considerable period, anticipating by two centuries Hegelian doctrine of the divine right of the state.

It is with Rousseau that Greek political theory begins to exercise a steady and continuous influence on modern thought. For this reason Rousseau may be rightly regarded as the re discoverer of the great truths discovered by Greek philosophers centuries ago.

Plato was a dominant influence in his thought, and with his help "he liberated himself from the individualist theory of Locke, and arrived at the Collectivist theory of the state expounded in the *Social Contract*." In his epoch-making work, the *Social Contract*, Rousseau advances the conception of the state as a moral organism and the doctrine of the general will. The state in his Judgment is not primarily a legal association for the safeguarding of the citizen's legal rights. It is essentially a moral association, through whose common life man reaches his moral perfection. Apart from his membership in the state, man is a stupid and limited animal. By his membership he becomes "an intelligent being and human." The state substitutes justice for instinct and law for appetite. It gives to men's actions the morality they lacked before. Its chief duty is to make moral liberty possible for its citizens by freeing him from the bondage of the flesh. It must force men to be free. Like Plato, Rousseau had a passion for the state, although in some respects his conception of the state differed from that of Plato. Rousseau preached the doctrine of the general will and of every individual having a share in its formulation.

The profound teachings of Rousseau influenced the thought of Kant and of the other German philosophers of the time and, through them, the thought of the British idealists. Postponing a detailed treatment of their thinking to a later

place in the chapter, we shall now turn to a brief description of the idealistic position in general.

## II. Statement of the Idealistic Theory of the State :—

It is futile to attempt a description of the idealistic theory which will be equally applicable to the teachings of all those who go by the name of idealists. Between German idealists and English idealists there are broad differences of outlook, not to speak of individual differences among the German and English thinkers themselves. The statement of idealism as here presented is based on the teaching of such moderate idealists as T. H. Green rather than on that of extremists such as Hegel.

The idealists believe that the state is an ethical institution. In the words of Bosanquet, it is the embodiment of an ethical idea. Other important ethical institutions in society are the family and the Church. The state is the most important among these institutions. In a sense it includes all the others. Interpreted strictly, the state is a legal organisation. But interpreted broadly, it is a moral organism practically identical with society. Justice for the individual consists in discovering his proper place in the life and action of the community and in fulfilling the functions attached to that place.

The state is indispensable to the fullest growth and development of human personality. Man is by nature a social being, and the state is the effective organisation of society for the realisation of a moral end. Between the end of the individual and the end of the state there is no true contradiction. The end of both is the perfection of personality. From an ethical stand-point, the state is not an end in itself. It is a means to an end.

The ethical unit is the person "The state exists for the sake of the person, not the person for the sake of the state. The function of the state is not to supersede the person, but to aid him in the development of his personality to give

him room and opportunity. It exists for him, not he for it; it is his sphere, the medium of his moral life.”\*

Viewed in this manner, the state is man’s best friend. The conception of Man *versus* the State is entirely erroneous. The anarchists who regard the state as an unmitigated evil and the individualists who look upon it as a necessary evil, both fail to understand its true significance. Anarchism leads to the evils of mob rule, and individualism to-day. “has almost reached its *reductio ad absurdum*.”† The ideal that each shall be allowed to live for himself has proved to be an impossible and contradictory ideal. As a reaction against extreme individualism there have arisen socialism and idealism. The latter theory, as mentioned above, believes that the true interests of the individual and the true interests of the state are one and the same—viz., the fullest and freest development of human personality. The idealist goes back to the Greek conception of the dependence of each on all and all on each. He believes that “the state is not an alien force imposed upon the individual from without, but that in their true being the state and the individual are identical,”‡ therefore obedience to the state is obedience to the citizen’s own better self.

While the ethical unit is the person and the state exists for the sake of the person, the idealists believe that the state has a will and personality\* of its own. It has a past, a present and a future, and is thus in some ways, different from the individuals who comprise it any one time. It has a continuity of purpose and steadiness of aim. The ideal State, embodying the rational will in its most perfect form, cannot will anything contrary to the best interests of its individual members. The fact that such a State has nowhere

\* James Seth: *Ethical Principles*, p. 293.

† *Ibid.* p. 290.

‡ J. Seth: *op. cit.* p. 292.

existed does not deter the idealist from contemplating it as a goal towards which to direct the activities of existing States.

The basis of the State, according to the idealist, is will, and not force. The State no doubt uses force, but that is not its primary or most significant quality. It is the embodiment of will. We ought to obey the State, says the idealist, because of the consciousness that in obeying it we advance a common good of which individual good is an intrinsic part. The idealist believes that man is a rational being and that lasting good can be brought about by continually appealing to his reason. He believes in the power of ideas.

The tendency of contemporary thought and effort is not, on the whole, to curtail the sphere of the State. It is "to socialise the State or to nationalise society"\*. "The true function of the State is to mediate and fulfil the personal life of the citizens."† In practical language, it means that the State should remove obstacles to good life. It cannot and ought not to enforce religion and morality directly. It should constantly keep before itself the supreme end of the individual which is the development of personality, also known as self-realisation or self-satisfaction. It should maintain those conditions of freedom which are necessary for man's good life by enforcing a system of universal and impartial rights. And rights, as mentioned earlier, are the outer conditions necessary for man's inner development.

In serving the State we are not disloyal to our highest self. We do not serve two masters. "The only master of our loyal service is the ethical and personal ideal."‡ The idealist does not regard as important the individual apart from the State in his repellent isolation. "Such an individual

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† J. Seth: op. cit., p. 299.

§ Ibid., p. 294.

||J. Seth: Ibid., p. 294.

is "anti-social and anti-political."\* His life is one "of absolute *laissez faire*."<sup>†</sup> The idealist conceives the person as "social and political as well as individual."<sup>‡</sup> "To isolate him from others, would be to maim and stunt his life,.....In so far as the State may be said to interfere, it is only with the individual, not with the person; and the purpose of its interference is always to save the person from the interference of other individuals. Neither the State nor the individual, but the person, is the ultimate ethical end and unit."<sup>§</sup>

As a general rule, the individual should obey the State. This does not mean that he may not criticise the political order. He is both sovereign and subject. But when the State invades the sphere of personality, he has the right of rebellion. Rebellion in such a case becomes a public duty. Even in his rebellion the individual should remember that he is still a citizen loyal to the best for which the State stands. There are two situations, says James Seth, in which the individual may rightly rebel: (a) When the State acts as a private individual or a body of individuals; (b) When the present formulation of the general will becomes so inadequate as to require reformation.

(a) The English and French revolutions are good illustrations of the former case. At these times "the actual State contradicted the ideal, seeking to destroy those rights of personality of which it ought to have been the custodian, and before which it was called to give an account of its stewardship."<sup>||</sup> Hence revolution was eminently notifiable. "The true sovereign must count

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\*Ibid., p. 295.

<sup>†</sup>Ibid., p. 295.

<sup>‡</sup>Ibid., p. 295.

<sup>§</sup>Ibid., p. 295.

<sup>||</sup> James Seth. op. cit., p. 301.

nothing 'his own,' must have no private interests in his public acts : his interests must be those of the people, and their will his. If he act otherwise, asserting his own private will, and subordinating the good of the citizens to his own individual good, he thereby uncrowns himself, and abdicates his sovereignty. Then comes the time for the exercise of the supreme power that still remains in the people."\*

(b) England before the Reform Bills provides a good illustration of a situation in which the general will needed to be re-formulated. In cases of this kind, reformulation does not need to take the form of revolution. Reformation is enough. Such reformation goes on continuously in every good state where there is an articulate public opinion.

### III. Idealistic Thinkers :—

Much unjust criticism has been levelled against idealism by failing to distinguish between the teachings of German and British idealists on the one hand, and the teachings of individual idealistic thinkers on the other. Joad, for instance, seems to condemn the whole of the idealistic school just because of the excesses to which the theory was carried by Hegel. This is altogether unfair.

*A. The German Idealists*—The first to claim our attention among these is Immanuel Kant (1724—1804), who is generally admitted to be the father of idealistic philosophy in modern times. There are some writers, however, who would confer that distinction upon his successor, Hegel. Kant, like his political guide, Rousseau, marks the transition from eighteenth century individualism and the philosophy of "natural rights" and the social contract to nineteenth

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\* James Seth. *Ibid.*

century idealism and the conception of the State as a moral organism.

As John Dewey puts it, "in a genuine sense Kant marks the end of the older age in philosophy. He is the transition to distinctively modern thought."

There is not much that is original in Kant's political philosophy. Rousseau and Montesquieu were the two great formative influences in his political thinking. Dunning states the matter in these words: "His doctrine as to the origin and nature of the State is merely Rousseau's put into the garb of Kantian terminology and logic; his analysis of Government follows Montesquieu in like manner."\*

One of the greatest contributions made by Kant to the idealistic philosophy is his approach to politics from the point of view of morals. Very early in his speculation, Kant discovered the necessity of pursuing political enquiry under the guidance offered by moral enquiry. Political philosophy he regarded as meaningless except as treated in relation to moral philosophy.

In the field of morals as well as in politics Kant adopted Rousseau's doctrine of the "moral will" and made it the cornerstone of his whole thinking. The man who is truly free, he said, is the man who is morally free. The phrase "autonomy of the moral will," coined by him, has become a household phrase among political thinkers. Freedom, as conceived by him, does not mean absolute and unqualified freedom. It is not synonymous with the power of satisfying every desire, whether reasonable or unreasonable. It does not mean license. The only kind of freedom to which a person has a right is "freedom qualified by respect for others, and controlled by universal laws." † Thus freedom

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\* W. A. Dunning: "A History of Political Theories, Vol. 3 p. 131.

† C. E. Vaughan: "Studies in the History of Political Philosophy, Vol. II, p. 86.

and right, in Kant's thinking, are practically coincident. Commenting upon it, Vaughan says, "Right expands into freedom and freedom expands into Right."

Respect for personality is the core of Kant's philosophy. Every individual he tells us, is an end in himself, and no one is to be treated as though he were simply a means to another's end. The categorical imperative which should guide the actions of every rational individual is: "Act in conformity with that maxim, and that maxim only, which you can at the same time will to be a universal law." The individual should not aim at particular advantages and satisfactions, but at those ends which are of universal application. His will is free only when it wills rational or universal objects. Such a will is the good will and the fulfilment of that will should be the supreme object of a person's endeavours. In Kant's own words: "Nothing can possibly be conceived in the world or out of it which can be called good without qualification except a good will." The state exists in order to promote such a will and check all selfish desires. Green was influenced by Kant's doctrine of the moral will in virtue of which man always wills himself as an end.

From the supreme worth and dignity of man Kant deduces liberty and equality as the necessary attributes of all rational beings. His passion for individual liberty is so great that he is not prepared to sacrifice it at the altar of the state. He realises that justice demands the subordination of mere individual freedom to the demands of social existence. But that does not mean that Kant is willing to abandon the liberty of the individual. "It is clearly a conflict in his mind between the claims of justice and the claims of individual freedom. He does not see his way fully to reconcile the two. He is too honest to sacrifice either." \*

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\* C. E. Vaughan : Op. cit., p. 80.

Passing from the ethical foundations of Kant's political philosophy to definitely political questions, we note that Kant deals with the following subjects:—

- (a) the social contract;
- (b) the relation between society and the state, between civilization and culture;
- (c) property;
- (d) punishment;
- (e) rights and duties;
- (f) the sphere of state action;
- (g) the right of revolution;
- (h) forms of Government; and
- (i) world peace.

A brief exposition of Kant's views on these topics will serve to distinguish the idealism of Kant from that of his followers.

(a) *The Social Contract*—Kant does not concern himself with the question relating to the historical origin of the state. He considers it as irrelevant and even dangerous. "He does not definitely accept the social contract; but neither does he reject it altogether. On the one hand, he feels instinctively that to base government upon the consent of the governed, pure and simple, is to hand over the fabric of justice and order to caprice and, possibly, to anarchy. On the other hand, the freedom of the individual, morally as well as materially, seems to him to demand the assumption of a freely accepted contract." \* Kant does not attempt to reconcile the contradiction between these two points of view. Nevertheless, he keeps the social contract on the ground that no man can rightfully be compelled to obey a law which he has not accepted of his own accord. But it is kept as a 'mere idea,' as in the case of Rousseau. By this contract, men "surrender their external freedom in order to receive it

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\* C. E. Vaughan : Op. cit.

immediately back again as members of a Commonwealth; they "abandon their wild lawless freedom in order to substitute a perfect freedom—a freedom undiminished, because it is the creation of their own free legislative will; but a freedom which nevertheless assumes the form of a lawful dependence, because it takes its place in a realm of Right of law." \* This contract is in the nature of a moral covenant by means of which people surrender their lawless freedom for a higher freedom. It is at the same time a constitutional compact by means of which a form of government is established, which binds those who administer it and those to whom it is administered. It does not mark a transition from a 'state of nature' to a social state, but from a less organised form of social life to a more articulated form; "from a society resting on custom and tradition to a society based on written law or, at the very least, on oral law universally known and accepted." †

It is worthy of note that none of the idealists following Kant uses the conception of the social contract even as a 'mere idea.'

(b) *Society and the State, Civilization and Culture*—English and American writers use the term "state" to denote society in its political aspect. Sometimes they use it as practically equivalent to Government, "as a special agency operating for the collective interests of men in associations." ‡ But the German usage is entirely different. To German thinkers society is a technical term which means something empirical or external. The state, on the other hand, is conceived as a moral entity, "the creation of self-conscious reason operating on behalf of the spiritual and ideal interests of its members." Its function is cultural and educative.

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\* Quoted by E. Barker: Op. cit., p. 26.

† C. E. Vaughan: Op. cit.

‡ J. Dewey: German Philosophy and Politics.

Even when it intervenes in material interests, as it does in regulating law suits, poor laws, protective tariffs, etc., its action has ultimately an ethical significance: its purpose is the furtherance of an ideal community." \*

A similar distinction is made between civilization and culture. Civilization is a natural and largely unconscious growth when people live close together. It is external. Culture, on the other hand, is deliberate and conscious. It is internal. It is the working of man's inner spirit. Morality is necessary for its development. "Culture involves the slow toil of education of the Inner Life. Attainment of culture on the part of an individual depends upon long effort by the Community to which he belongs. It is not primarily an individual trait or possession, but a conquest of the community won through devotion to duty." †

The above distinction between society and the state, civilization and culture, is found only in its beginnings in the writings of Kant. The fuller development comes with Hegel and his successors.

(c) *Property*—Like the idealists in general, Kant accepts the institution of private property. He does not adopt the Lockian teaching that a thing with which a person mixes his labour is his. He rejects the extreme individualistic doctrine of property as untenable. The ground on which Kant supports private property is that it is necessary for the expression of man's will. But mere will does not entitle a person to anything and every thing. In the appropriation of any object, he should take care that he does not, either by will or act, do any direct injury to his neighbours. In other words, property requires the express sanction of those who are immediately interested in it. It is a derived right and does not belong to man by nature. It "is not originally the

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\* C. E. Vaughan : Op. cit.

† *Ibid.*

right of the individual as such, but of the race which he represents.....It is a right derived from, and at every stage qualified by the right of, the community.”\*

(d) *Punishment*—Kant realises that the maintenance of the supremacy of justice through a system of rights necessitates compulsion and punishment. Right must be upheld for its own sake. Therefore, the primary object of punishment is to punish. Kant does not defend punishment, either in theory or in practice, as a means of striking terror into the hearts of prospective criminals. Neither does he justify it as primarily a means of reforming the criminal of the moment. Both these views—the deterrent and the reformatory,—in Kant’s judgment; do scant justice to the personality of the individual. Instead of treating men as ends in themselves, they treat him as mere instruments of state-craft.

Among British idealists, we find that Green and Bosanquet on the whole place more emphasis on the element of deterrence than on the other elements.

(e) *Rights and Duties*--As is to be expected, Kant lays much stress on the rights and duties of the individual. His interpretation of rights is in the spirit of Rousseau. Right is synonymous with moral freedom. “The only original right,” he says, “belonging to each man in virtue of his humanity is freedom.” Elsewhere he writes, “Liberty consists in the power to do anything which inflicts no injury on one’s neighbour; thus the exercise of the natural rights of the individual has no bounds except those which are necessary to ensure the enjoyment of the same rights to all other members of the community.”

A right in politics is not merely self-regarding. It does not mean the following of individual caprice. As in ethics, so in politics, ‘right is necessarily correlative to wrong.’ It

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\* C. E. Vaughan: Op. cit., p. 71.

carries with it a corresponding duty. The individual owes a duty to himself, to other individual members of the state, and to the state as a whole. A right is never solely a privilege. It is "also a burden and an obligation; an obligation which under certain circumstances, I may be punished for violating or neglecting."\* To have recognised this truth, in however hesitating a manner, is "among the chief services of Kant in political speculation"

As between rights and duties, Kant's emphasis is on the latter. Bernhardi says, "while the French people in savage revolt against spiritual and secular despots had broken their chains and proclaimed their rights, another quite different revolution was working in Prussia--the revolution of duty;" and the apostle of this revolution was Kant. Duty is to him self-imposed. It is purely a matter of inner consciousness. It stands for the correction of the lower empirical self by the higher rational self. Kant admits that this concept of duty is silent as to the specific duties of man in any given situation. It is a concept without a content. Being vague in its nature, it is easy to give it a meaning to suit one's own predilections. Thus we find that Bernhardi equates moral duty with universal military service

(f) *The Sphere of State Action*-- Kant is not a blind worshipper of the state. The general tendency of his political philosophy is individualistic. Hence we find that he does not assign a wide sphere to state action. Every thing legal and political is conceived by him as external and, therefore, not coming within "the strictly moral realm of inner motivation." Yet he is not willing to leave the state and its land as wholly immoral in their character. The natural motives of man, he considers, are egoistic. They are love of power, love of gain, and love of glory. They result in "the

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\* C. E. Vaughan: *Studies in the History of Political Philosophy*.

war of all against all." They present a regime in which the conquest of the world of sense by the law of reason is not easily possible. Hence "man in his rational or universal capacity must..... will an outward order of harmony in which it is at least possible for acts dictated by rational freedom to get a footing. Such an outer order is the state." It is not the business of the state to promote moral freedom directly. Only the individual can do that. The state should "hinder the hindrances to freedom: to establish a social condition of outward order in which truly moral acts may gradually evolve a kingdom of humanity." The state is justified in repelling whatever force is opposed to freedom. The force used by the state is different from other forms of force. "It has a sort of sacred import; for it represents force consecrated to the assertion and expansion of final goods which are spiritual, moral, rational."\*

Kant's attitude to the state is on the whole "somewhat grudging and individualistic." † His view that the primary business of the state is to hinder the hindrances to freedom was adopted by both Green and Bosanquet, but not by Hegel.

(g) *The Right of Revolution*--Having lived during the days of the French Revolution, Kant's chief political work, *Rechtslehre*, published in 1797, bears on it the influence of the Revolution. Kant had a horror of revolution and in his horror, he preached "a stagnation which even Burke would have regarded as excessive."‡ The existence of the state is so essential to man for the realisation of his moral purpose that there can be no right of revolution. The overthrow and execution of the sovereign, says Kant, is "an immortal and inexpiable sin like the sin against the Holy Ghost spoken of

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† C. E. Vaughan: Op. cit.

‡ E. Barker: Political Thought from Spencer to To-day, p. 25.

† C. E. Vaughan: Op. cit. p. 82.

by theologians, which can never be forgiven in this world or in the next." If the constitution is defective and charges are to be made, they should be made "only by the sovereign itself, through reform, not by the people, through revolution."

On this question of resistance to the state, Kant follows the true German tradition. Hegel and, to some extent, Bosanquet adopt Kant's point of view, while Green takes a different line altogether.

(h) *Forms of Government*.—Kant discusses three forms of state—autocracy, aristocracy, and democracy—and two forms of Government—republican and despotic, "according as there is or is not a separation of the legislative and the executive powers." \* Any form of Government which is not representative Kant discards as irrational; "but the function of representative may be vested in King or nobility as well as in elected deputies."† It is interesting to note that the German idealists as a whole, in spite of their advocacy of the general will and the supremacy of the people, find it impossible to abandon their superstitious reverence for monarchy. Kant in particular, "an aged professor in a royal university of the Kingdom of Prussia," could not bring himself to believe that the king was merely a chief executive; he had something at least of sovereignty inheriting in him.

(i) *World Peace*.—Kant was enough of a child of the eighteenth century to adopt cosmopolitanism as his creed. Nationalism as yet was a negligible factor so far as Germany is concerned. Kant conceived humanity as a whole and advocated a federal league of the nations, "each subject to the adjudication of the general collective will."‡ He believed that enduring peace could be secured among nations on the basis of such a federated union of mankind. The title of

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† Dunning: Political Theories, Vol. 3, p. 133.

† Ibid.

† E. Barker: Political Thought from Spencer to Today, p. 27.

one of his important political works is, *For Perpetual Peace. Criticism of Kant's Theory of the State.*

The following are the chief criticisms to which Kant's theory of the state is open:

(a) The ideal that Kant sketches is, as said above, an ideal without a content. It is too abstract and intellectual. It does not make an adequate use of the empirical method. As Dewey remarks, "a Gospel of duty separated from empirical purposes and results tends to gag intelligence." Abstract rights and abstract duties do not have much value in practical politics. They do not further progress and happiness. The utilitarian standard of intelligent self interest is hardly an ultimate idea; nevertheless, it at least evokes a picture of merchants bargaining, while the categorical imperative calls up the drill sergeant."

(b) The German interpretation of the state and culture, including that of Kant, is liable to much abuse. In a sense it is right to speak of the state as the body which embodies the spirit of the people. But German thinkers use this idea too literally. The Great War, e.g., was regarded by the Germans as "an outer manifestation of a great spiritual struggle."

(c) In spite of his abundant use of the conception of "moral freedom," Kant never made up his mind whether he wanted to use freedom in the ordinary sense of "being left alone" or in the higher sense of providing opportunity for the development of man's higher faculties. "He failed," says Vaughan, "because he hovered between two entirely different conceptions of the state. He never decided whether to regard the

state as a fortuitous aggregate of individuals, or as that without which even individual life would have no moral content nor significance." In other words, Kant wavered between eighteenth century individualism and later idealism.

*Fichte* (1762—1814) was a practical idealist. His political philosophy was largely influenced by the historical events of his day. He began as a cosmopolitan and ended as a nationalist. The disasters of the Napoleonic conquest were responsible for this change.

As far as his theory of the state is concerned he follows Rousseau very closely in his earlier works. The individual and his rights occupy the central place. In the later works, there is a decided shifting of interest. The people and the nation are placed at the centre of the scene and a scheme of state socialism is set forth as the ideal of a national state.

In Fichte's writings, as in that of all idealists, the state is a necessary implication of the human self. In his own words, "In the organic body every part continuously maintains the whole, and while it maintains it, is itself maintained thereby, just such is the citizen's relation to the state." There are traces of the social contract theory in Fichte's view of the state, but the conception of natural rights and a pre-social state of nature is absent. The only absolute right is the right to exercise one's rational will. While Kant interprets will as an application of reason to action, Fichte interprets reason as the expression of the will.

Unlike Hegel and his followers, Fichte takes care not to merge the individual in the sovereign state. In this respect he is like Kant and Green. He repudiates Rousseau's dictum that, in entering the state, each individual gives up himself and all his possessions to the collective whole. In his *closed commercial state*, one of his later works, Fichte states the function of the state to be, "To give to each for the first time his own, to install him for the first time in his property,

and then first to protect him in it." Like Hegel, he considers it the duty and mission of the German state to contribute to the cause of the spiritual freedom of humanity.

On the question of property, the starting point of Fichte is much the same as that of Kant, but he goes beyond the cautious limits laid down by his distinguished predecessor. Property says, Fichte, is not mere possession. It has a deep moral significance. It means the conquest of nature by man's will, the subjugation of the non-ego by the ego. It has a social basis and aim. "It is an expression not of individual egotism but of the Universal Will. Hence it is essential to the very idea of property and of the State that all the members of society have an equal opportunity for property." Hence also it is the duty of the State to secure to every one of its members the right to work and the reward of his work. Without such right, the supreme right of every man to moral self-determination becomes a mockery.

In his *Closed Commercial State*, Fichte, supports State Socialism. He supports it not on economic but on moral and idealistic grounds. Every individual has a right to labour and to a certain amount of property, for the development of his moral personality. The ultimate good is to him a universal State as wide as humanity and a State in which each individual will act freely, without State-secured rights and State-imposed obligations." But before this period is reached, it is necessary to pass through a period of the nationalistic closed State. Thus, as Dewey remarks, the moral individualism of Kant becomes an ethical Socialism in the case of Fichte. Like Kant, Fichte upheld the independent position of the hereditary monarch in a democratic constitution.

*Wilhelm Von Humboldt*.—With Kant, Humboldt believes that the State originated in a contract between men for their mutual benefit. The State is not an end in itself. Its primary purpose is to subserve the end of man, which is the highest well-balanced development of his powers as a whole.

Humanity cannot perfect itself apart from the fullest development possible for each individual.

The action of the State should not extend beyond "The provision of security of individual citizens in person and property. It should never undertake the positive promotion of their welfare. It should not concern itself with education, religion, and the improvements of morals. The development of character is a direct concern of the individual. Humboldt is thus an individualist in his attitude to the State. Unlike many other individualists, he is not enamoured of democracy.

Humboldt defends war, when it is waged in defence of the community. In spite of its horrible results, he considers war as having a very salutary influence on the development of human character.

*Hegel* (1770-1831)—Among German idealists Hegel has had the greatest influence in his own country. There are many who claim that he more than anyone else, was responsible for the World War of 1914-18. The philosophy expounded by him elevated the State to a mystical height and held that the German people had a divine mission to fulfil in their relation to the rest of the world.

Although proclaimed to be a typical idealist, Hegel was in a genuine sense a realist. "He had no patience with the "idea" or the "Absolute" whose foundations are laid in heaven. His ideal State was not something to be realised in the distant future, but was practically identical with the German State of his day. In his attitude to the State, Hegel was an Absolutist, almost a Brutalist.

1. *Kant and Hegel.* Hegel's political philosophy insisted in taking over the thought of Kant and Fichte and adopting it to the conditions of his day and to his own genius. Like his great precursor Kant, he based his system upon a spiritual idea. But, in the handling of that idea, he adopted a totally different method. While Kant had adopted the *a priori* or deductive method, Hegel pursued the

historical and evolutionary method. As Vaughan writes, "Analysis, criticism, is the dominant idea of Kant; the keynote of Hegel's achievement is evolution." To quote the same writer again, "Kant started from the individual consciousness, Hegel from the world of externalised knowledge and of organised institutions" To the end of his life Kant upheld an individualistic conception of State action, in spite of his idealistic thinking. Hegel rejected individualism *in toto* and advocated a conception of freedom which was more positive and objective than that of Kant. Freedom to Hegel means expansion. "It consists in the will to make my natural self adequate to the measure of the fulness of my thinking self."\* It is creative. "It expresses itself in a series of outward manifestations—first the law; then the rules of inward morality; and finally the whole system of institutions and influences that make for righteousness in the national State."†

Hegel glorified the national State and rejected international morality without any ceremony. Kant, on the other hand, was a believer in world peace and in a federal league of nations. Both, however, were firm believers in monarchy and distrusted representative institutions. Hegel rejected the contractual conception of the State, in which Kant had believed, and taught that the State was a "natural necessity." In this respect he was more loyal than Kant to the basic principles of idealism laid down by Greek thinkers.

(2) *Fichte and Hegel.* Fichte, we have said already, marks the transition from eighteenth century cosmopolitanism, as seen in Kant, to nineteenth century nationalism, embodied in Hegel. In him also we find an attempt to blend the German philosophy of the State with its philosophy of history. In his later writings, he develops the idea that a

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\* Barker : Political Thought from Spencer to To-day, p. 27.

† E. Barker : Ibid.

divine purpose is revealed in and through human history, particularly German history. He attaches increased significance to nationalism in general and to German nationalism in particular. The State is to him an organ of divinity. Therefore, patriotism is synonymous with religion. The German people, Fichte claims, are the only truly religious people in the world. Therefore they alone are truly capable of patriotism.

These basic ideas of the State and of history are taken over into the philosophy of Hegel, and there appear in a more accentuated form in such works as *Outlines of the Philosophy of Rights* (1820) and *Outlines of the Philosophy of History* (1822-31).

(3) *The Philosophical Implications of Hegel's Political Theory.* As in Kent and Fichte, so in Hegel, political theory is developed as part of a comprehensive system of philosophy. The keynote of this philosophy is "what is rational is real; what is real is rational." Although the historical and evolutionary method is used by Hegel at great length, it is used as an appendix to a vast body of abstract speculation.

All three writers had for the starting point of their respective theories the teaching of Rousseau, that the idea of freedom is the essence of man. Paraphrasing Rousseau, Hegel says "freedom is the distinctive quality of man. To renounce one's freedom means to renounce one's humanity. Not to be free is therefore a renunciation of one's human rights and even of one's duties." Once again he writes, "the freedom of nature, the capacity of freedom is not the actual freedom; for nothing short of the State is the actualisation of freedom." "The notion of freedom must not be taken in the sense of the casual free will of each individual but in the sense of the reasonable will, the will in and for itself."\*

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\*Noted by B. Bosanquet: *The Philosophical Theory of the State*, pp. 220-21.

Freedom being the essence of man, Hegel conceives man's will as free. Kant and Fichte had conceived it as "an attribute or faculty of an individual person."\* But Hegel interprets it as one aspect of pure abstract intelligence, of "*Geist*." It is "eternal, universal, self-conscious, self-determining"† In Hegel's even phraseology, the idea of the Will; as a last abstraction, is the free Will that wills the free Will.

Will, then, is free and absolute and manifests itself in various thought-forms by applying right reason. The first of these forms is law; the second is inward morality; and the third is "the whole system of institutions and influences that make for righteousness in the national State."‡ Under law Hegel discusses the idea of personality, property and contract, and shows that all of them are manifestations of the free Will. A living creature becomes a person only so far as it exercises free Will to be a person. Material objects are property because they are expressions of man's free will and have no will of their own. A slave is little better than property because he lacks the free will to be free. Throughout his discussion Hegel judges law and rights "not by a fixed standard, but with reference to the various stages of culture and self consciousness that history reveals."§

The second phase is subjective morality. Here Hegel discusses "those aspects of self-determination in which the individual is affected by a consciousness of other like individuals."||

The third and final phase which Hegel conceives as the highest of the three is *Sittlichkeit* variously translated as "Social Ethics," "The Ethical System," "the Moral life" and

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\* W. A. Dunning: Political Theories, p. 155.

† W. A. Dunning: Ibid pp. 155-56.

‡ E. Barker: Political Thought from Spencer to To day, p. 27.

§ W. A. Dunning: Political Theories, Vol. 3, p. 157.

|| Ibid.

"conventional or customary morality." This is the sphere where the mere externality of law and the mere inwardness of morality are reconciled. It is the sphere of concrete morality or conduct. It includes law, custom, and sentiment, the literal law and moral will. It is the opposite of the Kantian principle of the pure good will. In obeying the customary morality of the community which is the working of a universal cause the free will of the individual is fully realised.

It projects itself beyond itself, and in so doing reaches its perfection in the philosopher's own words, "what law (Recht) and abstract morality (Moralitat) are not, custom (Silte) is, namely, spirit (geist); and Spirit is "unity of the individual and the universal.\*

The successive phases of this final phase of the moral consciousness (Sittlichkeit) are the family, the civil or Bourgeois Society, and the State.

*The Family.*—Hegel's views on this question are the conventional views of his day and are for the most part incorporated into the teaching of Green. The modern family is a necessary element of society and the State, and is at the same time distinct from both. Like other institutions, it represents an element of mind. It reveals an intelligent purpose. It is not founded on mere feeling or on mere contract. It has an ethical and public side. On the ethical side it implies monogamy and equal and permanent relations between the husband and wife. The non-monogamous family is unethical. The modern monogamous family represents a higher stage of civilization than the ancient tribal system or any other system in which "the whole bond of union rests on merely natural feeling, kindness, generosity, or affection."†

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\* Noted by W. A. Dunning, p. 158.

† B. Bosanquet, the Philosophical Theory of the State, p. 250.

It is a mere confusion of relatives to "assimilate the State to a family by a sort of levelling down of the former or levelling up of the latter."\* Both are expressions of mind, but are distinct in their nature. Therefore their respective characteristics must not be slurred or scamped."†

*The Civil Society.*—This presents itself to Hegel as "the opposite extreme of life and mind to that embodied in the family."‡ It stands for the economic and industrial world in which men appear as bread-earners. For the successful pursuit of their economic interests they demand police functions and administration of justice. A society of this kind does not materially differ from the State. Yet Hegel insists on this distinction, partly with a view to giving an artistic symmetry to his system by dividing into three stages and giving the highest place to the State. The Civil Society, to Hegel "is not a separate society, but only an appearance within a larger-system."§ It is only within the State proper, and resting on its solid power, that such a world as that of Bourgeois society could arise or be conceivable. Its priority to the State is, like that of the family, the priority of comparative narrowness or simplicity, of dealing with fewer factors and of representing human nature in a more special, though necessary, aspect."||

The third phase is the Political Organisation or the State in the strict sense of the term. We shall consider this separately later.

*The Idea of Development.* From the above treatment of Hegel's philosophical tenets it is clear that the idea of development is germane to them. The world of nature is

\* Ibid:

† Ibid:

‡ Ibid: pp. 252-3.

§ Bosanquet: The Philosophical Theory of the State; p. 355.

|| Ibid.

interpreted as providing increasing outward expression to the spiritual instincts within man. The law of evolution adumbrated in Hegel's theory is not a mere mechanical law. It is a spiritual law. "It is the evolution not of mind from matter, but of matter from mind. Its upshot is not to materialise reason, but to spiritualise nature."\* Reason and matter, nature and spirit, are not treated as antithetical conceptions. "In one sense, reason and matter, nature and spirit, are co-ordinate elements in the world of our experience. In another, and a fuller, sense reason is all in all"† The development which Hegel traces is not the development of events or of institutions, but of the speculative idea. The idea—and not the facts—is the real object of our study. "The idea like all other things, has a history; and it is only by following its history, its growth in time, that its true nature can be understood"‡ The two central ideas of Hegel's system are :

- (1) There is nothing in the whole world of men's experience which is not the creation of reason;
- (2) reason being essentially a principle of growth, no one of its manifestations is intelligible, unless it be studied along the lines of its continuous development."

*Progress and Freedom*—Progress is to be measured in terms of a fixed end, which is the realisation of the spirit, in accordance with the principle of freedom. Freedom is an idea. It is the ideal to be realised by all men; progress means the gradual realisation of the idea of freedom. Freedom does not mean the mere absence of external restraints. It is not synonymous with the liberty of the individual to do what he will with his own faculties and his own possessions. It stands for the free development of man's powers—moral, intellectual,

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\* Vaughan : Studies in the History of Political Philosophy.

† Ibid.

‡ Vaughan: Studies in the History of Political Philosophy.

and spiritual according to the fundamental laws of his own nature.

*History*—To Hegel history is the pilgrimage of the spirit of man in search of itself. History is reasonable. The course is governed by reason or Providence. The individual plays an important part in history which through the community provides ample opportunity for the free development of his personality. Man's very existence as a moral being demands the community.

World history is the world judgment. (Hegel) Judgment, as used by Hegel, means victory for one people and defeat for another. Victory is the final proof that the world spirit has passed from one nation to take up its residence in another. To be defeated in such a way that a nation is obliged to take a secondary place among nations is a sure sign that divine judgment has been passed upon it. This is the way God works in human history. World history reveals four distinct stages in the realization of the idea of freedom. These stages are marked respectively by the ascendancy of the oriental, the Greek, the Roman, and the German state systems. The orient knew and to the present day knows only that *one* [i. e. the despot] is free; the Greek and Roman world that *some* are free, the German world knows that *all* are free\*

(4) *Hegel's Theory of the State*.—Hegel treats the state as the system in which the family and the civil society "find their completion and their security.† The state is the individual in history. It is to history what a given individual is to biography. It is the actualisation of freedom, because it is the embodiment of reason. It is the image of a rational

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\*Hegel: *Philosophy of History*, p. 104.

†B. Bosanquet: *The Philosophical Theory of the State*, p. 260.

‡ *Ibid*: p. 26.

conception; ‡ a hieroglyph of reason; the perfected rationality. From the point of view of will it is the incarnation of the general or real will. Therefore, true freedom for the individual consists in obeying the laws of the state and in cultivating" the every-day habit of looking on the commonwealth as our substantive purpose and the foundation of our lives."\*

The state represents the best in individual will. It has a will and personality of its own, apart from and superior to the wills and personalities of the individuals who compose it. The individual can attain his higher freedom only as a member of it. Rights are derived from the state and no individual has rights against it. The state has an "absolute fixed end in itself". It is the unity of the universal and individual will, or, in other words, objective and subjective freedom; "and the unity of universality and particularity is perfected rationality. As such, the state is the eternal and necessary essence of spirit."†

From these premises Joad draws three somewhat paradoxical conclusions.

- (a) The state can never act unrepresentatively, thus the police man who arrests the burglar and the magistrate who locks him up express the real will of the burglar as a member of the state to be arrested and locked up.
- (b) The bond which binds the individual to other individuals in the community and to the state as a whole forms an integral part of his personality. Therefore, he cannot act as an isolated unit but only as an integral part of the state. The will with which he acts is not a purely individual will, but a part of the will of the state.

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\*I bid.

†W. A. Dunning: Political Theories, Vol 3, p. 159.

(c) The state contains within itself, and represents, the social morality of all its citizens. This does not mean that the state is itself moral, or that it is bound by moral relations to other states or to any groups within the state itself. It is supra-moral.

All this easily leads to the absolutism, omnipotence, and infallibility of the state. The state is God on earth. It is the march of God in history. "It is the divine idea as it exists on earth." "It is the divine will as the present spirit unfolding itself to the actual shape and organisation of the world." It enriches the personalities of its individual members, purging them of petty aims and all selfishness. In Hegel's own words, "It carries back the individual whose tendency it is to become a centre of his own into the life of the universal substance."

(5) *War and Internationalism*.—The nation-state is the object of Hegel's veneration. He does not want it to be absorbed in the whole of humanity. An international federation he considers as a mere Will—O—the Wisp, because, in his judgment, the essential principle of the national state is struggle, and this is in accordance with the Divine purpose. The state can attain its uniqueness and perfection only in relation to other states. Only one nation at a time can be the fullest realization of God. The movement of God in history is seen in the way in which supreme power passes from one nation to another. War is the best illustration of such a flight of the divine spirit in its outward movement. It effectively displays the "irony of the divine Idea." It is to national life what the winds are to the sea, "preserving mankind from the corruption engendered by immobility." (Hegel) It is a clear demonstration of the vanity of all merely finite interests. It destroys the selfish egoism of the individual which makes him claim his life and his material goods as belonging to himself or his family. "The state of war," says Hegel, "shows the omnipotence of the state in its individuality."

International law is properly no law, since there is no superior power which can enforce its will upon the state. It represents merely certain usages which are accepted so long as they do not come into conflict with the supreme purpose of the state. Against the absolute right of the "present bearer of the world state; the spirits of the other nations are absolutely without right. The latter, just like the nations whose epochs have passed, count no longer in universal history." (Hegel) "Since they are already passed over from the stand-point of the divine idea, war can do no more than exhibit the fact that their day has come and gone. World history is the world's judgment seat." (Dewey).

(6) *Constitution*.—According to Hegel, the state manifests itself as a constitution or internal public law, as external public law, and as world history. Each one of these reveals a progressive realization of freedom—the synthesis of the universal and individual will. The three important powers in Hegel's rational state are the legislature, the administrative (including the judicial), and the monarchic. Of these three the monarchic is the most important. It is the unifying force in the state, which prevents the other two from disrupting the state. Perfect rationality is realised in constitutional monarchy, because it comprehends and blends the best elements in the three traditional types of state monarchy, aristocracy, and democracy. In a constitutional monarchy the prince represents the one, the administration the few, and the legislature the many.

Sovereignty, as a philosophical conception, belongs to the state as a whole. It does not reside in any one element. It resides only in the organised whole acting as organised whole. Nevertheless, in practice sovereignty means determination by some person though this may mean only the signing of one's name. Such a sovereign, says Hegel, is the monarch; and the monarchic principle is thus present and active in every state.

Sovereignty must therefore be assigned scientifically to the monarch, and not to the will of the people, which is vague and indefinite.

The legislature includes the prince, the administration, and the people. Without the participation of the first two elements, the unity of the state is sure to be destroyed. The popular element in the legislature must be representative of interests and classes, rather than of masses of individuals. "The corporations of Trade Societies have also an important place directly, by their touch with the departments of the executive government."\*

As for the division of power the legislature lays down general principles, the executive applies them to particular cases and the prince brings "to a point the acts of the state by giving them, 'like the dot on the i. — the final shape of individual volition.' † True freedom is possible only in a monarchy of the kind described by Hegel.

(7) *Theory of Property*—Hegel supports the institution of private property on the familiar ground that it is the material means upon which the individual will can exert itself. It is essential to the fulfilment of personality.

(8) *Theory of Punishment*—Hegel, like Kant, looks at the question from the point of view of right and morality. When a right has been violated, says Hegel, it is the duty of the state to reassert it by means of compulsion and punishment, if necessary. The primary ground of punishment is not public security or the violation of a contract explicit or implied, between the criminal and the community. Punishment simply means that right has been defied and that the only way of vindicating it is by a public redressal of the

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\* B. Bosanquet; *The Philosophical Theory of the State*, p. 262.

† B. Bosanquet; *The Philosophical Theory of the State*, p. 263.

outrage done to the individual in the first place and, through him, to the community and the law of justice in the second." Punishment is as much a right of the criminal, as it is of the community. Not to punish a criminal but be lenient with him is to treat him as an insane person or an idiot. To put him down on the bare ground of public security is to regard him as a beast. Punishment gives the criminal his due, in a good sense as well as in a bad. It is a right of which he should not be defrauded.

(9) *Value of Hegel's work*—To C. E. Vaughan we owe the following points:—

- (a) Hegel grasped the connection between politics and morals more clearly, and handled it with far greater insight than any of his predecessors. He set aside as abstract and unreal the impassable barrier which previous thinkers had fixed between the moral and political growth of man, as well as Kant's distinction between man's speculative reason and his practical.
- (b) He exposed to merciless criticism the popular belief in a sharp cleavage between the individual and the state. The state, he showed, includes the whole circle of man's life. The individual, therefore, cannot be conceived apart from the community of which he is an intrinsic part. He is what he is as a member of it. Hegel denied the impossibility of a purely individual morality and, in so doing, corrected a profound mistake made by Kant. He rejected the individualistic theory of the state.
- (c) He was the first thinker to grasp the full scope of the historical method.
- (d) He was the first to recognise the debt of the individual conscience to the instinctive sense of the community.

(e) He was the first to ground the idea of progress, not on accidental circumstances, but on the very nature of reason. Progress means to him change according to law which at every step is in conformity with the law of reason.

(10) *Hegel's Limitations*—Notwithstanding these valuable contributions, Hegel's theory is subject to certain serious limitations:—

(a) It easily leads to the absolutism and omnipotence of the State. If the seventeenth century thinkers extolled the Divine Right of Kings, Hegel extolled the Divine Right of the State. As Barker remarks, Hegel exalted the national State to a mystical height. The State is conceived by him as an end in itself and the citizen is called upon to fall down and worship it. Such sacrifice of the individual to the State is not in consonance with our ideas of liberty and democracy. Hegel's doctrine means in practice "Spiritual servitude, bodily conscription, wars for 'national interests', and the devotion of human beings to Leviathan in peace and Moloch in war."\*

(b) In spite of his advocacy of the historical method, Hegel deals with the State not as a historical phenomenon, but as an intellectual concept. He constructs his view of the State on the basis of his philosophical speculations and, curiously enough, identifies the ideal state with the German State of his day. In politics especially, he insists that the actual is the rational. "The task of philosophy," he says, "is to comprehend that which is, for that which is, is Reason." The practical result of this point of view is a superstitious

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\* I. Brown: English Political Theory, p. 145.

reverence for the established order and "an undue distrust of all that threatens to modify or disturb it." (Vaughan).

- (c) There is in Hegel, "a disposition to applaud the existing fact just because it is a fact and to defy successful brutality just because it has succeeded." It is no wonder that Hegel's disciples in Germany transformed his Idealism into Brutalism.
- (d) Hegel's interpretation of world history and of the divine spirit is hardly convincing. We cannot help feeling that it is forced to fit into Hegel's preconceived notions with a view to glorifying the German State.
- (e) Green criticises the Hegelian conception of the State as a realisation of freedom in the following words: "To an Athenian slave, who might be used to gratify a master's lust, it would have been mockery to speak of the State as realisation of freedom, and perhaps it would not be much less to speak of it as such to an untaught and under-fed denizen of a London yard with gin shops on the right hand and on the left.....Hegel's account of freedom as realised in the State does not seem to correspond to the facts of Society as it is, or even as, under the unalterable conditions of human nature, it ever could be."\* The real flaw in Hegel's theory lies in mistaking tendencies for accomplished facts.
- (f) Hegel's denial of the principles of State morality and of the sanctity of international law is not in keeping with idealism, as commonly understood.
- (g) Hegel identifies the State with society. This is a

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\* *Principles of Political Obligation*, p. 8.

profound mistake. However closely inter-related the State and society may be, the distinction between the two should be kept clearly in view if we are to avoid State despotism.

(h) The Hegelian theory as a whole is abstract and metaphysical and far removed from the realities of life.

*Hegel's Disciples*--Certain elements in the Hegelian conception of the State were advocated in an exaggerated form by later German political writers and militarists, notably by Nietzsche, Treitschke, and Bernhardi. "All these taught the indispensability and even the nobility of war; they deified and apotheosized the State; they maintained that it sets its own standards of morality; that it is not bound by the rules of international law except in so far as it chooses to be bound by them; and that every State is itself the judge of its own international obligations, etc."\* Treitschke held that the State was power and that no limits should be placed on its activities. The first duty of the State, he said, was to make itself strong and powerful. A State with a superior civilization, he believed, had a right and a duty to impose its civilization upon those less cultured. He wanted the State to be self-assertive, aggressive, and militaristic. He had nothing but contempt for the smaller States. He argued that the progress of civilization could only come about through the State and that individual effort, unaided by the State, amounted to little. Thus the high-sounding political theory of Hegel resulted in Militarism and even Brutalism.

*Influence of the German Idealists*--Leaving out of account Hegel's disciples mentioned above, who have no right to be styled idealists, we find that Kant, Fichte, and Hegel

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\* J. W. Garner: Political Science and Government, pp. 232-3.

have exerted much influence on Western Political Thought. Dunning sums up their influence as follows.—

1. The conviction common to all of them was that "the vital truths of political science were to be reached rather through the processes of pure thought than through investigation of experience."\*
2. They all clothed "certain institutions and aspirations of contemporary politics with the sanctifying garb of a mystic form and nomenclature."†
3. They developed to its utmost limits "the idea of will as the ultimate element in politics and law."‡
4. "Contract, as the formula through which the individual will created social and political authority, received at the hands of Kant and Fichte the highest degree of philosophical finish."§ "Hegel dropped it entirely in his explanation of the State."||
5. "All of them save Humboldt ascribed unmeasured majesty and excellence to the State."¶
6. "The doctrine of nationality as a fundamental principle of political organisation received considerable stimulus from both Fichte and Hegel."\*\*

B. *The English Idealists*—The idealistic philosophy of Germany did not take full root in the English soil, although it was accepted with considerable qualifications and reservations by certain writers, the principal among whom were

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\* W. A. Dunning: Political Theories, Vol. 3, p. 166.

† Ibid.

‡ W. A. Dunning: Political Theories, Vol. 3, p. 167.

§ Ibid.

|| Ibid.

¶ Ibid., p. 168.

\*\* Ibid., p. 169.

T. H. Green, F. H. Bradley, William Wallace, R. L. Nettleship, and B. Bosanquet.

*T. H. Green*—It is a refreshing contrast to turn from the subtle and abstruse philosophy of Hegel to the practical thought of Green.

(1) *Sources of Green's Thought*—The sources of his thought are Plato and Aristotle among Greek thinkers, Rousseau, and Kant and Hegel, among German thinkers. With the Greek philosophers Green agrees in regarding the State as natural and necessary and the life of the individual as an intrinsic part of the life of the community. At the same time he differs from them as regards the aristocratic view of life held by them. While the life of self-satisfaction or self-realization was viewed by Greek thinkers as belonging to the few, Green adopts the democratic point of view that the life of citizenship can be realized by all who are capable of a common interest. As between Plato and Aristotle, Green was influenced more by the latter than by the former. He was more an Aristotelian than a Platonist. Like Aristotle he completes his ethics by his politics and he believes that the supreme function of the State is to make it possible for its individual members to realise a good that is a common good. In his ethics, Green speaks of 'self satisfaction' or 'self-realization' as the end of conduct; and in his politics he constantly refers to the "common good" as the supreme good. All these terms are convertible in his thinking.

From Rousseau, Green, like Kant and Hegel, borrows the conception of 'moral freedom' as the peculiar and distinctive quality of man. He assumes the free will of man—although within certain limits and distinguishes between 'negative' and 'positive' freedom, between freedom in the generic and freedom in the particular sense, between 'juristic' and 'spiritual' freedom, and between the 'empirical' ego and the 'pure' ego. Freedom of the former kind

—negative, generic, juristic, and empiric—means simply self-determination or acting on preference. It may even mean following one's own sweet will and pleasure. Freedom in the latter sense—positive, particular, spiritual, pure, etc.—stands for the increasing tendency for the objects of reason and the objects of will to coincide. Free acts, in other words, are rational acts. It is in this sense, as Ritchie remarks, that Green accepts Hegel's dictum that the object of the State is freedom.

Freedom in its true sense does not mean the freedom of being left alone. When the satisfaction that man seeks is not his true satisfaction, it may be said that his will is not free. There is no moral freedom in such a case. Such a man is under bondage. True satisfaction may be described as the state of peace or blessedness. It is a state of mind where the whole man has found his object. It is not the satisfaction of this or that particular desire. It is the realization of the whole self of man. As Kant puts it, "He is free because conscious of himself as author of the law which he obeys." Freedom means determination of the will by rational objects; objects which help to satisfy the demand of reason, the effort after self-perfection.

Green does not accept without qualification Hegel's dictum that the State is the realization of freedom or freedom objectified. He recognises the fact that institutions are not fetters on the individual but are embodiments of ethical ideas. At the same time, he holds that to regard any given State as a complete realization of freedom is a mockery. A gulf separates the ideal from the actual and, therefore, there is at best only a tendency for the State to become the living embodiment of freedom. Green does not endorse the Hegelian dictum, "The Actual is the Rational and the Rational is the Actual". Nor does he give such an exalted place to established morality. Green admits that established morality has a very important part to play in the ethical development

of the individual. But the final stage in that development is reached only when man seeks perfection for its own sake. Only then he really becomes free.

In more ways than one Green departs from the teachings of Hegel and approaches the standpoint of Kant. Witness, for example, his views on individual liberty, war, and international morality, where he is more Kantian than Hegelian. On questions of resistance to the State, the value of representative government, the place of the monarch in the constitution, the rationale of punishment, etc., he differs from both the German writers. He is at the same time a Hegelian in that he emphasises the moral value of the majesty of the State. But this emphasis is not at the expense of the "liberty of the subject."

(2) *Green's Theory of the State*—The political philosophy of Green, says E. Barker, can be stated in the form of three related propositions: human consciousness postulates liberty: liberty involves rights: rights demand the State.

We have already dealt with Green's conceptions of freedom and there is no need to cover the same ground once again. It is sufficient to say that Green's doctrine of liberty is "the Kantian doctrine of the free moral will in virtue of which man always wills himself as an end." \* Green is convinced that the best way, in which the State can help its individual members in the life of self-realization is by providing them with a system of impartial and universal rights. Rights, he holds, are the outer conditions necessary for man's inner development. The supreme right of every rational person is the right to become what a man should be, "what he has it in him to be, in fulfilment of the law of his being." † Every other right is derived from it. Natural

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\* E. Barker: Political Thought in England from Spencer to To-day, p. 32.

† Principles of Political Obligation, p. 17.

rights in the sense of pre social rights are a meaningless conception. But natural rights in the sense of moral or ideal rights are full of meaning. "They are necessary to the end which it is the vocation of human society to realise."\* The basis of rights is not mere legal recognition. It is a common moral consciousness. Rights are relative to morality rather than to law. They are the conditions necessary to the fulfilment of man's moral end.

No one can have "a right except (a) as a member of society and (b) of a society in which some common good is recognised by the members of that society as their own ideal good, as that which should be for each of them."† This means that "only among persons, in the ethical sense, can there come to be rights."‡ Through the possession of rights the truly moral person makes a common good his own. Rights should be regulated by mutual recognition.

True to the idealistic tradition, Green regards the State as natural and necessary. It is an ethical institution essential to the moral development of man. Its primary purpose is to enforce rights, even by compulsion if necessary. The State is justified in using force, because it expresses the general will of the people, and by general will Green means the common consciousness of a common end "Will, not force, is the basis of the state."

According to Green, the State is neither absolute nor omnipotent. It is limited from within and without. From within (a) it is limited by the fact that law can only deal with external acts and intentions and not with motives. Therefore, the State cannot promote the good life directly. It can only remove obstacles to good life. (b) It is limited also by the fact that in exceptional circumstances the individual has the duty of resistance. (c) Green further recognises

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\* *Principles of Political Obligation*, p. 34.

† *Ibid.*" " " p. 44.

‡ *Ibid.*

that the various permanent groups within society have their own inner system of rights and that the right of the State over them is one of adjustment. As E. Barker observes: "The State adjusts for each (group) its system of rights internally and it adjusts each system of rights to the rest externally."\* Because of its power of adjustment the State, says Green, has ultimate authority. For not adopting the pluralistic position wholesale, MacIver criticises Green in these words: "All through he is considering what the state can and therefore should do to secure the conditions within which men can act as free moral beings. But the poles of his thought are still the individual and the state. He does not consider how both are affected by the existence of other associations with other instrumentalities than political law. Had he done so he would have seen that the problem is not simply what the state *should* do, but also what the state is permitted to do, surrounded as it is by other powers, limited as it is by definite organisations of other kinds, fulfilling functions of their own in ways of their own. Green remains on the verge of the modern problem of sovereignty."†

From without, Green holds, the State is limited by international law. Unlike Hegel and like Kant, Green believes in a universal brotherhood of men. The right of every man as man to free life involves the conception of a common humanity and of a common social organism.

(3) *War*‡—Holding the above point of view, Green's attitude towards war is entirely different from that of Hegel and his German disciples. War, says Green, is never an absolute right. It is at best a relative right. It violates the right of man to free life. It may be justified as one wrong

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\* Political Thought in England from Spencer to To-day p. 43.

† The Modern State, p. 471.

‡ Summary of Section K in Principles of Political Obligation.

to correct another previous wrong, that is, as a "cruel necessity." But it is a wrong all the same. War is not murder in the moral sense. The soldier is not a murderer. If we say that the authors of the war are murderers, the difficulty is that we cannot locate these persons. Even if the blame can be assigned to some individuals, it cannot be so very definite as in the case of individual murderers. However selfish their motives, they cannot be fairly interpreted as ill-will towards the persons who happened to be killed in the war.

Nevertheless, war is a moral wrong. The argument that those who kill in war do not intend to kill anyone in particular, does not make the violation of the right any less serious. It is not like death due to a wild beast or to a natural force like lightning. The deaths in a battle are caused distinctly by human agency and intentional agency.

A second argument which is often used in defence of war is that in a war between civilized nations soldiers may incur the risk voluntarily and that therefore, there is no violation of the right to free life. Green refutes this argument. His refutation is that it does not rest with a man to retain or give up his right to life at his pleasure. (It is for the same reason that suicide is condemned everywhere.) Whether the army is raised by voluntary enlistment or by conscription, the State compels the risk of certain number of lives. War means destruction of human life inflicted on the sufferers intentionally by voluntary human agency.

A third argument sometimes used by those who defend war is that the right to physical life may be overridden by a right arising from the exigencies of moral life. In other words, it is sometimes said that, in certain circumstances, not to fight is worse than to fight. Green is not convinced by this argument. He holds that all that the argument in question does is to shift the blame of war to those responsible for those exigencies. War remains a wrong just the same.

The destruction of life in war is always wrong-doing, whoever be the wrong-doer.

A fourth argument used by some people in defence of war is that war calls out certain virtues, such as heroism and self-sacrifice and that it is the only means of maintaining the social conditions of the moral development of man. As such, they argue that war is a necessary factor in human progress. While admitting the force of this argument, Green holds that destruction of life in war is always wrong-doing. Caesar's wars of conquests in Gaul and the English wars in India were certainly followed by beneficent changes. But these changes, Green believes, could have been brought about by other means just as well. War violates human rights. That ulterior human welfare could be brought about only by war is due to human wickedness. Green is willing to admit that desire to do good to man-kind through war diminishes the guilt of any particular war. But it is a wrong all the same. As a matter of fact, he argues, the majority of people who take part in wars are not actuated by such laudable motives. Often their motives are selfish. General human selfishness is the cause of war.

"Hence it follows that the state, so far as it is true to its principle, cannot have to infringe the rights of man as man by conflicts with other states." War is not an essential attribute of the State in its perfect condition. It may belong to the State in its imperfect actuality. But as the State becomes more and more perfect, there will be less and less need for war.

Therefore, we do not accept the further argument used by the supporters of war that conflict between States is inevitable. The gain of one State does not necessarily mean the loss of another. The more perfectly each one of the States attains its proper object of giving free scope to the capacities of all persons living on a certain range of territory, the easier it is for others to do so, and in proportion as they all

do so the danger of conflict disappears. It is not because States exist, but because they do not fulfil their functions as States in maintaining and harmonising general rights, that such conflicts are necessary. The conclusion to which Green is driven is that no State, as such, is absolutely justified in doing a wrong to mankind, though a particular State may be conditionally justified. War can not be condoned on the ground that it is a necessary incident of the existence of States. There is no ground for holding that a State is justified in doing whatever its interests seem to require, irrespectively of effects on other men. War at best is only a relative right.

The sixth and final argument used in defence of war is that Green's cosmopolitan view will destroy patriotism and national life and necessitate a universal empire. Green's reply to this argument is that public spirit, to be real, must be national, but the more a nation becomes a true State the more does it find outlets for its national spirit in ways other than conflicts with other nations. It is utterly foolish to speak as if the desire for one's own nation to show more military strength than others were the only or the right form of patriotism. So far as the perfect organisation of rights within each nation is attained the occasions for conflicts between nations disappear.

Green admits that nationalism is a good thing. He believes that the love of mankind needs to be particularised in order to have any power over life and action. But there is no reason why this localised or nationalised philanthropy should take the form of a jealousy of other nations or a desire to fight them, personally or by proxy. To the extent to which States become thoroughly formed, to that extent there is no need for patriotism to be diverted into military channels. The identification of patriotism with militarism is a survival of the times when States in the full sense did not exist. Patriotism and militarism are by no means identical. Standing armies are a proof that mankind is not yet thoroughly

organised into political life. They are due not to the development of a system of States, but to circumstances which witness to the shortcomings of that system.

We have dealt with Green's indictment of war fully, because it "constitutes one of the finest and strongest parts of his lectures" \* and illustrates his departure from Hegel, who could hold that "the state of war shows the omnipotence of the state in its individuality".

(4), (5) and (6), *Theory of State Action, Punishment, and Property*. We have dealt with these topics earlier in this book, and therefore, we do not propose to go into them at any great length here.

(4) *State Action*—As said earlier, Green conceives State action in negative terms. Good life is for the most part self-earned. The State cannot promote it directly. All that it can and should do is to remove obstacles that lie before human capacity as it seeks to do "things worth doing". A good act is good only when it is done spontaneously, that is, from a disinterested motive. Acts done under compulsion lose their moral value. What the State must, therefore, do is only to enforce those acts the doing of which, *from whatever motive*, is necessary for the good life within society.

Applying this theory to the practical conditions of his day, Green considers ignorance, drink, and pauperism as obstacles to the free expression of human capacity, and is, therefore, in favour of a considerable range of State action in the removal of these obstacles. He is not deterred in his thinking by any arguments based on natural rights or vested interests, or on the doctrine that the free will of man should be given complete scope to "ride triumphant of itself over illiteracy, intemperance and indigence."† Green realises

\* E. Barker: Political Thought in England from Spencer to To-day, p. 46.

† E. Barker: Op. cit., p. 51.

that free will is not something independent of, and superior to, the outer conditions of life and that, therefore, these conditions need to be adjusted before the free will can really exercise its freedom. This point needs stressing, because idealism is sometimes criticised as being a high sounding justification of hide-bound conservatism.

To revert to Green's examples, compulsory education puts compulsion on the parents for the sake of the child and prohibition puts compulsion on each and all for the sake of each and all.

(5) *Punishment*—Green's treatment of this question is an intrinsic part of his theory of State action. The criminal's will, which is anti social, constitutes a force opposed to freedom. Punishment in such a case is a force directed against that force. Punishment is not inflicted with any direct reference to the moral guilt of the offender in the past, or to his moral reformation in the future.\* To measure punishment according to the moral guilt of the crime, is an impossible task. Neither the pain of punishment nor the moral guilt of the crime could be gauged by the State. Even if the State could work out a proportion between the pain of punishment and the moral depravity of the crime, it would have to punish every case differently. That would mean an end to all general rules of punishment. Besides, proportionising punishment to moral guilt implies that the business of the State is to punish wickedness as such. Green thinks that the State has no such business. If the State is to punish immorality (proper), it will check disinterested moral effort. The punishment of crime, therefore, "neither is, nor can, nor should be adjusted to the degree of moral depravity properly so called, which is implied in the crime."†

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\* E. Barker: Political Thought in England from Spencer to To-day, p. 48.

† E. Barker: Political Thought in England from Spencer to To-day p. 195.

Similarly, the primary object of punishment is not to bring about the moral reformation of the criminal. All true reform comes from within. Therefore, no amount of punishment can reform the criminal against his will. The best that the State can do is to regenerate his own will. "Actually, punishment is adjusted to maintaining the *external* conditions necessary for the free action of will: it is not adjusted to the *inner* will itself."\* Its ultimate aim is "to secure freedom of action for the moral will of every member of the community."† This means that the punishment should be regulated by the importance of the right violated. Indirectly punishment may induce the criminal to correct his own recalcitrant will. "Even in this latter aspect punishment is still a 'removal of obstacles'; for the obstacle which the criminal opposes is not only a force, but a will."‡

The conclusion at which Green arrives is that the primary object of punishment is "not to cause pain to the criminal for the sake of causing it, nor chiefly for the sake of preventing him from committing the crime again, but to associate terror with the contemplation of the crime in the mind of others who might be tempted to commit it."§ This means that the future prevention of crime is the chief object of punishment. The means to that end is associating terror with the crime in the general imagination—as much terror as is necessary to prevent the crime.

(6) *Property*—On this question, as on many others, Green takes a liberal view. He is neither a defender of

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\* E. Barker: Political Thought in England from Spencer to To-day, p. 49.

† E. Barker: Political Thought in England from Spencer to To-day, p. 49.

‡ E. Barker: Political Thought in England from Spencer to To-day, p. 50.

§ E. Barker: Political Thought in England from Spencer to To-day, p. 192.

private property in all its aspects nor an out and-out critic of it. To use modern terminology, he is neither an individualist nor a socialist. He defends property in general on the ground that it is indispensable to the expression of man's personality. It is a corollary of the right to free life. Every man should have the opportunity to earn property, because every one has the capacity to partake of a common social good. But this capacity varies from man to man. Therefore, property should be unequal. Different men have different functions to fulfil in the life of the social whole, and inequality of property is a necessary condition of it. When, however, some people acquire or retain property in such a manner as seriously to interfere with the realization of the wills of others, the State should step in to redeem the situation. On this ground Green justifies the restriction of private property in land, and opposes family settlements. His ideal is "a class of small proprietors tilling their own land". The State is not to appropriate unearned increment.

(7) *The Family*—Green's views on this question have been fully dealt with earlier.

(8) *Representative Government and Practical Politics*—Unlike Kant and Hegel, Green was a firm believer in representative government and an advocate of a wide franchise. He was an active liberal in politics and not a mere academician. "He had always a lively sympathy for the middle class and non-conformity. He had, besides, a keen interest in education and licensing reform....In the civic politics of Oxford he took a share which has made his name a tradition and an example in the university. In national politics, he was a liberal of the school of John Bright, and from 1867 onwards he appeared on political platforms."\*

(9) *Criticism and Appreciation*.—Among those who

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\* E. Barker: Political Thought in England from Spencer to To-day, p. 31.

have adopted the idealistic point of view Green seems to be the most sober. In the words of E. Barker, Green was both a soaring idealist and a sober realist. We differ from Green with regard to details, but the general principles which he laid down are sound even to-day. His justification of property in capital, his depreciation of any attempt on the part of the State to appropriate unearned increment, and his stress on the deterrent theory of punishment, may not commend themselves to us to-day. "But what matters is rather his principles than his analysis of a particular set of conditions or his suggestion of a particular policy. If his principles are true, each age can progressively interpret their meaning to meet its own needs." His firm hold on the worth of persons, his deep sense of the liberty of the individual, his conviction that individual good is an intrinsic part of social good, his refusal to raise the State to a mystical height, his recognition of a universal brotherhood and international law, his eagerness to place limits on the power of the State so that spontaneity in the performance of moral acts may not be deadened, his emphasis on right or rights, his view that property is a means for the expression of personality, and his admission that in extreme cases the individual has the duty of resistance—all these are as sound to-day as they were when Green's lectures were delivered (1879-80).

*F. H. Bradley* is more Hegelian than Green ever was. In his chapter in *My Station and its Duties* in *Ethical Studies*, Bradley expounds his theory of the State. E. Barker regards this theory as a combination of the Platonic conception of justice with the Hegelian conception of *Sittlichkeit*. Without going into the details of Bradley's view of the State, we may say that the conception of a moral organism is the central feature of it. The sum of relations in which man stands constitutes his position or station in society. It is the duty of every man, says Bradley, to find that position in society and fulfil the functions attached to it. In so doing,

he obeys the law of his being. "In fact, what we call an individual man is what he is because of and by virtue of community, and communities are not mere names, but something real." No man stands alone. He is born a member of a community, and the community exerts its influence on him at every turn. The very atmosphere which he breathes is social through and through, "so that the conduct of his being implies in its every fibre relations of the community. He is what he is by including in his essence the relations of the social state; and if morality consists in the fulfilment of self, it consists in the fulfilment of those relations."\* All this means that for the individual morality consists in the fulfilment of his station and its duties.

The State is a "system of wholes". It includes all the communities which affect men. It is a moral organism, "a systematic whole, informed by a common purpose or function"†. On its outerside, it is a body of institutions. On its inner side, it is a soul or spirit which sustains that body. Each one of the parts of this organism has a spirit and consciousness of its own. In this respect, a moral organism like the State differs fundamentally from an animal organism. It has a life and continuity of its own. Individuals live in all their fulness only to the extent to which they cultivate their specific field. "The breadth of my life is not measured by the multitude of my pursuits, nor the space I take up amongst other men; but by the fulness of the whole life which I know as mine."

Bradley realises that no given State is a perfect embodiment of the ideal which he sketches. At any given time the morality of the State may be on a lower plane than the public conscience of the people or ideal morality. Again, individuals may desire to rise above the narrow limits of

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\* E. Barker: *op. cit.*, p. 63.

† *Ibid.*

their station in the community and realize a cosmopolitan morality. All this may lead to the realisation of a society of "all humanity as a divine organic whole"\*

The chief criticisms to which Bradley's theory is open, are:—

- (1) No careful distinction is made between the State and society. The State as described here is really society as well as the State. "It is the whole complex of influences arising from the fact of association."† Not to distinguish the State from society is sure to lead to unlimited State regulation of life.
- (2) "My station and its duties," is a phrase difficult of interpretation. It may be construed to mean that the individual should be satisfied with whatever lot has befallen him and should carry out the duties of that station without complaining. Such an interpretation would of course make idealism synonymous with hide-bound conservatism. If "my station in life" is to mean anything at all, it should mean the position for which the individual's powers and faculties best fit him. But in the modern industrial state a large majority of people are directly or indirectly deprived of the opportunity of finding the station in life which will best suit their capabilities.

*B. Bosanquet*—Hobhouse characterises him as Hegel's "most modern and most faithful exponent." This is somewhat of an exaggeration. We are safe in saying, however, that Bosanquet begins with Rousseau and Green, and ends almost in Hegel.

The starting-point of Bosanquet's theory is the conception of the free moral will of man expounded by Rousseau. True

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\* E. Barker: *op. cit.*, p. 66.

† *Ibid.*

freedom, to all idealists, consists in willing rational or universal objects. The exposition of Bosanquet's doctrine falls into three stages: (1) distinction between the "actual" will of the individual and his "real" will; (2) connection between the "real" will of the individual and the "general" will of society; (3) the State as the supreme expression of the general will.

- (1) Using the terms "actual" and "real" in a technical sense, Bosanquet consistently uses the term "actual" to describe man's impulsive, unreflective, or recalcitrant will, and the term "real" to describe his rational or "constant" will. According to his terminology, a man is said to exert his "actual" will when he acts from moment to moment as a conscious individual; and as this will is corrected and amended by what he wants at all other moments and is adjusted to the wills of others, it becomes "real."
- (2) The "real" will of the individual does not stand alone. It is bound up with the "real" wills of other individuals in society and becomes the "general" will. This means that the individual can make the best of himself only in society. In his "repellent isolation" man is worth nothing. The terms "general will" and "the common life of society" are convertible terms. Man's full satisfaction cannot be attained apart from the satisfaction of the general will.
- (3) The State is the perfect embodiment of the general will. The common life of society depends upon the law and political order provided by the State. Several of Bosanquet's critics are willing to admit the validity of the first two stages in his doctrine, but are not prepared to admit the validity of the third.

The notion of the common life of society is a central feature of Bosanquet's theory. Bosanquet holds that man's life is social through and through and that even his individual relations are influenced by the common social life. Society consists of a group of individuals united by some common general purpose or a dominant interest. All this means that the idea of a common mind or a general will is not a mere fancy. It is a living reality. Take, for example, a school or an army or a game of cricket. Each one of them represents the working of a mind or minds. We cannot, e.g., understand the mental activity of the child at school apart from the mental activity of the parent and of the teacher. Institutions are thus embodiments of ethical ideas. In Bosanquet's own words: "An institution implies a purpose or sentiment of more minds than one, and a more or less permanent embodiment of it... In institutions we have that meeting point of the individual minds which is the social mind. Rather ..... we have here the ideal substance, which, as a universal structure, is the social, but in its differentiated cases is the individual mind."\*

Bosanquet's theory of institutions is—

- (1) every social institution or group is a complicated interworking of the minds of individuals;
- (2) the totality of the group is reflected in the mind of the individual;
- (3) every member tends to impose upon the other members a peculiar capacity or point of view.

The various ethical institutions in society are the family, the neighbourhood group, the nation-state, and the like. Of these, the State is the most supreme. It is *the* ethical ideal. It is a source of all, pervading adjustments. It is an operative criticism of all institutions. In its narrow sense, it is a political organisation using force. It puts its seal of approval on all those social efforts which are beneficial in their nature.

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‡ The Philosophical Theory of the State, p. 277.

In a broad sense, it stands for the general organisation and synthesis of life and is practically synonymous with society. This latter interpretation of the State as a working conception of life as a whole brings Bosanquet very close to Hegel.

*Green and Bosanquet*--A close study of these two writers reveals not only striking resemblances, but also striking differences.

*Resemblances*---

- (1) Like Green, Bosanquet assumes the indispensability of the State for the realisation of man's higher life. But, unlike him, he comes close to the Hegelian conception of the free absorption of the individual in the spirit of a nation. However high a place Green may be prepared to give to the State, he has no disposition to sacrifice the liberty of the subject to the majesty of the State. Such a statement, we are certain, can not be made in relation to Bosanquet without serious qualifications.
- (2) On the nature of the State and the proper sphere of State action, there is little to distinguish Bosanquet's theory from that of Green. Both writers believe that while the State is an ethical institution, it cannot, in the very nature of the case, promote morality directly. Art, morality, and religion fall outside its scope; and in the interest of the best life the State should leave them alone. The primary function of the State is to hinder hindrances to good life by providing a system of impartial rights. Thus, both Green and Bosanquet adopt what appears to be a negative view with regard to the limits of State action. The peculiar sphere of the State is the world of external action.

(3) Unlike the German idealists, and particularly Hegel, neither Green nor Bosanquet is a believer in absolute monarchy. True to the English tradition, they both believe in representative government as the best form. But Bosanquet's reverence for the State is so great that it may easily lead to state absolutism. It is true that he does not plead for the authority of any political organisation but only pleads for the State. In practice, however, this may mean giving unlimited authority to the government of the day.

*Differences:—*

(1) On the question of resistance to the State, Bosanquet adopts a more conservative point of view than that adopted by Green. The State as representing the will of the community has the sole right of judging when the expressions of the individual conscience are dangerous to the welfare of the community. This does not mean that the individual has no "right of rebellion." He has that right, but it is granted to him not on the basis of his private conscience, but on that of the social conscience. When the individual rebels, the assumption is that he represents the social mind more adequately than do the State representatives. Bonsanquet seems to admit that such assumption may be true, "but his own interest is rather in emphasizing the fact that the individual is more liable to be mistaken and that the petty gain in practical value may be more than offset by the injury done to the stability of the social organisation itself."\* His general conclusion is that the ordinary processes of the State "as sole

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\* N. Wilde: The Ethical Basis of the State, p. 68.

organiser of rights and as guardian of moral values" are so important that the "right of rebellion" may be regarded as almost negligible.

(2) In his theory of punishment, Bosanquet departs to some extent from Green. Both thinkers adopt the element of deterrence in punishment as the most essential. However, Bosanquet's view is somewhat more positive than that of Green. The argument he uses is of a psychological character. What happens to man in his subconscious region sooner or later affects his conscious self. This being so, punishment which belongs to the realm of automatic relations, may so affect the conscious will as to bring about lasting reforms in the character of the person punished. "Thus punishment may mean, not that henceforth I cease to have slips because I fear to experience a like shock again, but that henceforth I cease to have slips because I have come to my senses; have had my consciousness of the meaning of a whole system of habits awakened; and have realized in the light of such consciousness, what my offending means."\* Thus, punishment in being deterrent is at the same time reformatory.

(3) In his treatment of war and international morality, Bosanquet parts company with Green most decidedly. As seen already, Green condemns war as wrong because it violates the right of every rational being to free life. Bosanquet adopts a totally different point of view. He makes a distinction between the acts of the State as such and the personal acts of individual

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\* E. Barker : op. cit., pp. 76-77.

statesmen and insists that it is altogether inappropriate to apply to acts of the former category moral terms like murder and theft. The State, he further says, is "the guardian of our whole moral world and not a factor in our organised moral world." All this, he contends, does not mean a denial of the moral responsibility of the State. Yet, he writes, "The State, as such, certainly cannot be guilty of personal immorality, and it is hard to see how it can commit theft or murder in the sense in which these are moral offences."<sup>\*</sup> Bosanquet does not contend that the interests of the State can justify every departure from current personal morality. It is a matter of relative importance. This principle, he says, is recognized throughout the whole of private life. "Duties are relative to positions; I may not and must not do what you must and may."<sup>†</sup>

The State has a will and personality of its own and, as such, it has a moral responsibility to its citizens. One of its chief responsibilities is to seek peace and ensue it. In the absence of effective international law, it is the duty of the State to defend its citizens by force, if necessary. "As the individual must ultimately follow his conscience to the end, so the State, if it is to be morally responsible, must follow its own. It is the guardian of moral interests, and must be faithful to its duty."<sup>‡</sup> There is always a possibility of the claims of mere life coming into collision with the claims of a better life.

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\* B. Bosanquet : *op. cit.*, p. 300.

† B. Bosanquet : *op. cit.*, p. LIII.

‡ B. Bosanquet : *op. cit.*, p. L.

In such cases, it is obvious that the well-ordered State should choose the latter in preference to the former. Everyone knows, says Bosanquet, that he must not speak all truths, nor endeavour to right all wrongs, nor carry out all promises. These are obvious limitations. "Every man, not to speak of every great organisation, involves others, and must take account of the consequences of his acts.. And in acting for a huge organisation, whether political or other, ....limitations on veracity, justice, and good faith.....become more and more imperative. All we can ask for our guide, and all we really need, is devotion to supreme values, common sense, and *bona fides*."\* "What is necessary is to distinguish carefully the position and the true functions of all moral beings, but especially of powerful organisations, . and to strive that no more harm may be done than is inevitable."†

To the question whether it is not possible to remove these conflicts which arise out of the many-sidedness of life by recognising humanity as a unit, Bosanquet returns a negative. His answer is that at present there is no organisation of humanity, no connected communal consciousness. States are not united to one another in the way that individuals in a State are united together. The League of Nations, at present, is just a means to make international law more effective. It is not a single community. There are no common aims and common life. Humanity is an aggregate rather than an organism. Our primary loyalty is

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\* Op. cit., p. LII, footnote.

† Op. cit., p. LIV.

to a quality and not to a crowd; it is to the best life of our own community. From a religious point of view one might say that both these loyalties should coincide, but not in the practical secular life.

*Criticism and Appreciation of Bosanquet's Theory:—*

(1) Hobhouse, who is a vehement critic of Bosanquet, criticises him for his doctrine of the will. He holds that the distinction between the "actual" and "real" will is altogether false and claims that the actual is the real and the real is the actual. This is hardly fair to Bosanquet, who uses these terms in a technical sense. Hobhouse quibbles with words when he says that his will for the time being is his real will. It is what Bosanquet would call "actual." Since our experience is continuous and most of us make steady progress all the time, it is a mistake to split up our acts, as Hobhouse does, as though they had no relation to each other. Bosanquet's interpretation of the will seems to be more satisfactory. He relates man's acts as a whole. The fact that a person's will undergoes modifications does not mean that it is a different will.

Hobhouse says that there is strictly no part of the individual which is more real than any other part. But we know from experience that one act is not exactly the same as another. We constantly differentiate between moods and acts. By "actual" Hobhouse means that all the acts expressive of the will—good and bad—are there. No one denies that. The question is, do they all have the same quality or value?

A little later in his book, *The Metaphysical Theory of the State*, Hobhouse qualifies his crude

statements. The logic of his thinking forces him to adopt Bosanquet's distinction, although he prefers to use the terms "permanent" and "transitory" in the place of "real" and "actual." Bosanquet would have no objection to accepting Hobhouse's phrases if it were not for the fact that a person's "permanent" will may be narrow and selfish and thus fall far short of his "real" will. The permanent will of a criminal, for instance, is not "real" in Bosanquet's sense. Neither the selfish man nor the criminal can make the most of his life. In both these cases the "real" and the "actual" will tend to fall apart.

Calling to his aid, the average man, John Jones, Hobhouse argues that if Jones is to give up his selfish will, his will must be transformed. Bosanquet would not use the word "transformed," because the individual is rational even at the beginning. What Bosanquet calls "real," Hobhouse calls "good," "rational," or "harmonious," and adds that this will is not "real" in the average man or is not complete even in the best of us. Bosanquet would accept the latter alternative, inasmuch as the "real" will is an ideal and no one is perfect. Nevertheless, to the extent to which the individual is not carried away by his impulses and corrects himself in the light of his experience, the "real" will is present to a substantial extent. Bosanquet would have no objection to saying that the "real" will is actually present in the average man to a considerable degree, although he would be the first to admit that good will in its fulness is not complete even in the best of us.

Hobhouse further says that Bosanquet beclouds the issue when he contrasts the "real" with the "transitory" or "trivial" will. Hobhouse's own point of view is that every passion which is intense is "real." This is a mistaken view. The intensity of a separate passion and the depth of one's wider interests are entirely different things. But Hobhouse mixes them up. The intensity of a passion does not prove that it is more "real" than anything else in Bosanquet's sense. Hobhouse contends that inharmonious and transitory desires are equally "real." What Bosanquet would say is that they are "actual." Hobhouse goes on to say that the process of eliciting the real will is so roundabout that when one gets it one will not recognise it. Therefore, he asks, why not admit that the real will is simply an ideal which we can never reach? Bosanquet's answer to this question is that even the imperfect life of man can have "real" will present in it. The average man's life is a mixture of the "actual" and "real" will, steadily progressing towards the "real."

Passing from the distinction between the "actual" and the "real" will, to the conception of the general will, Hobhouse asks, what ground is there for assuming that the harmony between the individual and society will express the true will of the individual? Suppose an individual desires to get the better of others. How are we to show him that this is not his "real" will? Hobhouse answers it by saying, "Consistency be hanged! I'll do what I please." It is needless to say that this is not a proper answer. If the individual is determined to do what he pleases,

he must also be prepared to take the consequences. Inconsistency in this case means practical conflict with others. Bosanquet considers not only man's reason, but also his emotion and will.

When Bosanquet uses the phrase "the general will," he has in mind a general scheme running through a common nature or a common structure. Common nature does not mean that all are identical. General will stands for a common social nature determining the lives of individuals. But it is not identically the same in every one of the people. Hobhouse says, "In quality and character, these real wills are indistinguishable." This is a pure mistake.

A little later Hobhouse attempts a definition of "self." In this definition he emphasises physical, bodily things. He forgets that the things that unite us with other people are not mere private personal things. It is in things like religion and morality that the common self has its reality. Hobhouse is mistaken in placing man's individuality in his private feelings. Bosanquet, on the other hand, places it in the higher spheres. According to him, individuality expresses itself in the share it takes in the common life of society. Bosanquet can quite as well work with Hobhouse's phrase "individual of a higher order" as with general will. The point to remember is that we cannot draw hard and fast lines between two individualities, although we can draw those lines on the bodily side.

(2) Bosanquet's conception of the social mind or social will, together with the related conception of a

social organism, has also been questioned by critics. Here, again, it seems to us that Bosanquet stands on a much more solid ground than do his critics. From the side of their bodily feelings men form an aggregate, but not so in the realm of mind and will. The separateness of minds is not so great as the separateness of bodies. Therefore, we cannot treat minds as separately as we can treat bodies. We cannot, for instance, all eat the same food, but we can all think the same thought. The process of discussion is a process of thinking together. The outcome of a rightly conducted discussion is a single whole.

The "spirit of the age" is not a ghost. It is not anything apart from the individual wills. Yet it is not the production of the will of any one individual. It is a collective production. It is in this sense that we speak of the will of the family, the will of the trade union, and the will of the State. Just because there is no social brain, it is absurd to say that there is no social mind either. Our ideas affect one another. Therefore, the individual mind cannot be understood by itself. It can be understood only in relation to the social mind. The phrase "social will" does not mean one big will above so many small wills. It means the interacting of different wills and the practical uniting of them through a general scheme. Thus two lawyers may plead one case. Although they are two distinct individuals, the case they present is a single one. Mental unity should not be tied down to bodily unity. Similarly, there is one will in the members of a team, if they work into each other's hands. They reveal a single purpose or a general will.

Bosanquet is right in insisting that only in society the individual can make the most of his life. No one can develop his human nature in a well-rounded way apart from society. This, however, is not the same as saying that there is no conflict between the individual and society in practice, as Bosanquet is apt to hold. Ivor Brown, who criticises Bosanquet without properly understanding him, says, "This conception of the state as a social organism, transcending all the individual organisms that compose it is .....fundamentally undemocratic"\*. Nevertheless, there is some justification for Brown's charge that, in his doctrine of the general will, Bosanquet "puts into the hands of the governing class and of those who can worm their way into that charmed circle a weapon of infinite menace."† "If the concept of the social organism is rigorously applied the result is state-slavery on an unparalleled scale"‡

- (3) As shown above, Bosanquet practically identifies the State with society and comes very near to a belief in the free absorption of the individual in the rational State. These are blemishes in his theory, against which we cannot really defend him.
- (4) Neither can we defend Bosanquet's views on war and international morality. The State is responsible for the actions of its agents. It is quibbling with words to say that the actions of the State as such are different from the acts of its accredited representatives. Both the State

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\* Ivor Brown : English Political Theory, p. 144.

† " " " " " p. 145.

‡ " " " " " p. 148.

and its agents are responsible to the moral judgment of the world. As Ernest Barker puts it, "If a citizen can ..... treat his own state as legally responsible for damage, it is difficult to see why a state, which can undergo legal responsibility, should not also undergo moral responsibility if there is any body of moral opinion to affix responsibility."\* Bosanquet is too full of enthusiasm for the State, when he claims that the State "has no determinate function in a larger community, but is itself the supreme community, the guardian of a whole moral world, but not a factor within an organised moral world."†

**Criticism of Idealism and Defence**—Many and varied are the criticisms which have been levelled against the idealistic interpretation of the State. While many of them contain elements of truth, we believe that idealism is capable of holding its own against them.

- (1) Critics of idealism say that it is a purely abstract and metaphysical theory and that it does not deal with realities. The conceptions which it presents are far removed from the actual conditions of life. Thus William James describes the idealistic theory as "a rationalistic philosophy that indeed may call itself religious, but that keeps out of all definite touch with concrete facts and joys and sorrows." It is a purely intellectual theory. It considers man as a rational being and leaves out of account the other aspects of human nature. The State is presented in terms of conscious reason and will, and such

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\* E. Barker : op. cit., pp. 78-9.

† B. Bosanquet : op. cit., p. 302.

factors as habit and imitation, feelings and passions are entirely ignored.

It is true that idealism gives a high place to the power of ideas. But this does not mean that it is founded on a mere illusion. To reject man's intelligence and rely on his feelings and immediate perceptions, as some modern writers do, is to drag man down to the level of the lower animals. We have no objection to tracing our social interests and feelings back to primitive instincts. But to stop short of that is to have "a foundation which has no superstructure." There is no doubt that the present-day psychological approach to the great social problems of man has a great deal to commend it. But this does not mean that we are prepared to abandon reason and be entirely ruled by feelings and emotions. It is necessary to remember that the higher in the scale of evolution (reason) should interpret the lower and not *vice versa*. The psychologist, in denying the power of organised ideas, leads us to a "curious form of agnosticism." His position readily becomes pessimistic.

We admit that a considerable part of the teaching of the idealists is abstract and metaphysical; but that is not necessarily to condemn it. It gives a theoretical basis to practical facts. Political science being a normative science will be failing in its duty if it does not provide us with ideal types and standards. It is not a mere descriptive science. Apropos of this, Garner writes, "Like ethics political theory is concerned with what ought to be as well as with what actually is; the real nature of a thing is what the thing is when its growth is fully developed; the

political philosopher, therefore, may very properly idealize the state and deal with it in its imaginary splendour and perfection."\* The so-called realist often fails to see beyond his own nose. While the critics of idealism concentrate attention upon the existing imperfect States, the idealist has the faith and vision to look forward to an ideal State. The ideal which he sketches is not a static ideal, but dynamic and is capable of adaptation to changing circumstances. "Ideas have hands and feet." They possess life and vitality.

What the realist does is largely to criticise the idealist. He does not contribute much that is constructive. A simple description of how human beings behave as members of an organised society is not all that is required of the political philosopher. He should go beyond that to a delineation of how they should behave. Criticising the realists, Sir Henry Jones aptly remarks, "they propound no theory of their own, but maintain a precarious existence by living on the defects of idealism, and by indicating—which is not difficult—the problem it has left unsolved."† When the idealist claims that the State is the product of reason and the rational will, he does not pretend that political life and political institutions have come into being as the result of careful reasoning. What he means is that, looking at the development through the ages, it is clear that man's reason has been in operation all the time even though in an indirect and implicit manner.

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\*J. W. Garner: Political Science and Government, p. 239.

\*Sir Henry Jones: Idealism as a Practical Creed, p. 13.

"If it had not been present, the development would have ended not, as it has done, in a rational system of organised life which our reason can understand, but in a confused amalgam of taboos and instincts and habits which would have no meaning, no connection, and no reason."\*

The idealist admits that even to-day, in spite of the great advances that man has made in various directions, his actions are not often dictated by conscious reason. They are frequently the result of habit or unconscious imitation. Nevertheless, the idealist contends that they are capable of explanation by reason. What he wants is that habit and imitation should be brought to the aid of reason, because they are the hand-maids of reason, and not its masters.

(2) Even those who admit the importance of reason and will in a consideration of State life, feel at times that idealism mistakes ideals for actual facts. Instead of realising the ideal, it idealises the real. This tendency is particularly marked in Rousseau and Hegel. Hobson goes so far as to describe idealism as "the tactics of conservatism." The social reformer despairs of it, because it seems to preach "the divine right of things as they are."

This criticism is not without its justification. Aristotle idealises slavery; Hegel glorifies war; and Green is able to reconcile private ownership of capital with his liberal tendencies. Our only defence is that there is no necessary connection between idealism and conservatism. It is quite possible to argue for a radical social

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\* E. Barker : op. cit., p. 83.

programme on the basis of idealism as it is to argue for conservatism. The phrase "removal of obstacles to good life" is so broad as to include extensive State action, depending of course upon external circumstances and the predilections of the person employing the idealistic theory.

In close connection with the above criticism, it is sometimes said that the idealistic theory is too negative in character, especially in the sphere of State action. The idealists hold that the State can only deal with external acts since it uses compulsion. It cannot deal with motives. There is no way by which the State can directly promote moral excellence or perfection. Writing on this side of the question, Bosanquet says, "the use of spiritual influences in a spiritual form is only open *per accidens* (accidentally) to State agency, while the promotion of spiritual ends by external means, and, pre-eminently by external means in which compulsion is operative, is only possible through delicate and indirect methods."\*

In defence of idealism, it may be said that, while the theory of State action is stated in negative terms, the results it leads to are positive. The chief reason for insisting on the negative character of State action is to safeguard the spontaneity or disinterestedness with which moral acts ought to be performed. For the State directly to undertake positive measures in the interest of man's good life is certain to lead to a pauper mentality or the undue dependence of the individual upon the State. It will defeat its

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\* B. Bosanquet : op. cit., p. XXXII.

own end. Individualism glorifies the individual and treats him as the end to which society is only a means. Socialism and Hegelianism go to the other extreme and claim for the State "the glamour which belongs to the highest self-expression by which man transcends his isolation."\* English idealism, on the contrary, takes the middle course, although we cannot help feeling that both Green and Bosanquet exaggerate the purely negative aspect of State action. The individual and society at a lower level of existence are a means to the individual and society at a higher level.

(4) The idealistic theory, remarks Bosanquet, is claimed to be too narrow and rigid. Critics say that this theory may have been applicable to the simple conditions of ancient Greek city-States, where no distinction was made between the State and Society. But under the changed conditions of to-day, it is said that the State should be carefully distinguished from society and that a more adequate place should be given to the permanent associations within society than has been given by the traditional monistic theory.

We admit that many of the idealists fail to separate the State from society and that this failure leads to the sacrifice of the individual to society. At the same time, we are not prepared to admit the pluralistic point of view which seeks to reduce the State to a place of absolute equality with other associations in society. In spite of the changed conditions of to-day, we cannot

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\* B. Bosanquet : op. cit., p. XXXIII.

deny the fact that the State has the ultimate and absolute power of adjustment. In the words of Bosanquet, the State is "a source of pervading adjustments and an idea-force holding together a hierarchy of groups and not itself a separable thing like the monarch, or the 'government,' or the local body with which we are tempted to identify it."\*

Another sense in which idealism is said to be too narrow is in its alleged emphasis on the moral and spiritual goods of life to the exclusion of the material. The end of the State is assuredly good life or the excellence of souls. But this does not mean that the idealist advocates the direct promotion of good life by State action. Nor does it mean that he is altogether oblivious to the material needs of man. A perusal of Green's theory, for instance, is sufficient to show how close this writer keeps to the concrete facts of social life.

The ground on which idealism is said to be too rigid is in connection with the difficulty of locating the general will. Pluralists either deny the conception of the general will altogether or claim that each permanent association within society has a general will and personality of its own. We have shown earlier that, however difficult to grasp the conception of the general will may be, it stands for a fundamental reality. The idealist does not refuse to admit that groups or associations other than the State can have a will and personality of their own. All that he wants is that the State should be given a unique place in

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\* Bosanquet : op. cit., pp. XXVIII and XXIX.

society on account of the special tasks which it is called upon to perform.

The idealistic theory, says Bosanquet rightly, is far from being too rigid. It is concrete and capable of adaptability to changing conditions, as is shown in the fact that the theory is adjusting itself to the present enthusiasm for the study of group life.

(5) In the light of what has been said, it is not necessary to take too seriously the criticisms of such unsympathetic writers as Joad and MacIver.

Joad denounces idealism as unsound in theory, untrue to fact, and liable to extend a dangerous sanction to the more unscrupulous actions of existing States in the sphere of foreign policy.

(a) Both Joad and MacIver claim that the idealists identify the State with society and that this is a serious flaw in their theory. This criticism is no doubt applicable to the German idealists and such British idealists as Bradley and Bosanquet; but is not applicable to such sober idealists as Green. MacIver argues that the community may be regarded as possessing "an enduring mind,"\* but not the State. We fail to see the validity of this argument.

(b) We agree with Joad when he argues that to say that man cannot develop himself fully apart from the State is not to accept the omnipotence of the State. But the assumption that he makes that the idealists as a whole believe in the omnipotence of the State is a profound mistake. We have already seen how narrowly

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\* R. M. MacIver: *The Modern State*, p. 451.

Green and Bosanquet limit the sphere of State action. Joad draws a false contrast between the individual and the State when he writes : "The State exists for individuals, individuals do not exist for the State." \* The relation of end and means is not applicable to the relation between the individual and the State. None of the idealists, with the exception of Hegel, regards the welfare of the State as something apart from and superior to the welfare of the individuals. Yet Joad paints all the idealists with the same colour.

(c) Both Joad and MacIver consider the distinction between the "real" and "actual" will as unsound in theory and unreal in practice. We have already defended idealism against this criticism. Joad defines "real" will "as a will to carry out every decision of the majority of an association to which I belong." † This is a mere caricature. It is equally an exaggeration to say that whenever a conflict occurs between an individual and the State, "it (idealism) takes the view that the latter must inevitably be right." ‡

(d) MacIver, in particular, attacks the idealistic doctrine of the personality of the State. His argument is that a State consists of persons, but that does not make the State a person any more than a grove of trees is itself a tree or a colony of animals an animal. This striking analogy is guilty of carrying over into our

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\* Joad : Modern Political Theory, p. 18.

† " " " " " p. 19.

‡ Ibid.

mental relations what is true of our physical relations. In the physical world, we are distinct individualities. But in the mental and moral world there is the contact of personality with personality, and it is possible to evolve a group mind and a group morality. To use a homely analogy, by hanging a dozen coats on a single peg, we do not make a single coat. But in the meeting of a committee of people who have not made up their minds already there is evolved a single general will or a common mind.

All this does not mean that the State is "the greater mind, the supra-person, whose will or purpose comprehends and transcends that of the individual minds or persons, who compose it."\* It only means that the State has a will and unity of its own, which are not embodied in any single person at any one time. The State is a living person.

Many of the criticisms of MacIver and other opponents of idealism apply to individual governments, but do not apply to the State as such. The mistake made by some idealists is in identifying the actual government of the day with their ideal State.

**Appreciation of Idealism.**— While not apologising for extreme forms of idealism, as found in Hegel, we believe that sober idealism of the type presented by Green has a great deal to commend it.

- (1) It maintains a close connection between ethics and politics, and rightly holds that no political progress is possible apart from the application

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\* R. M. MacIver : op. cit., pp. 449-50.

of the highest moral principles to our individual and social lives. Separation of politics from ethics is disastrous to both.

- (2) It insists on the organic unity of society and shows clearly how society is held together by the State. Individual development is impossible in isolation. The true good of the individual is to find his proper place in the common life of society.
- (3) It holds that the highest form of good is a self-earned good. Any form of State action which is a hindrance to the spontaneous performance of morality stands self-condemned. Individual initiative, enterprise, and originality should have free scope for their manifestation in every well-ordered society.
- (4) Idealists are justified in placing before us a goal towards which political progress may be directed. To the extent to which this ideal is a mere Utopia or the product of one's fancy, it is futile. But to the extent to which it is based upon what we know of human nature and the practical conditions of social life, it is valuable. The ideal presented by the idealists is capable of realisation. It is not an idle dream.
- (5) Idealism is right in insisting that the highest attributes of man are the attributes of mind and will. It has no objection to tracing the humble beginnings of man's reason back to primitive instincts and impulses. But what it fervently holds is that the higher in the scale of evolution—reason—should interpret the lower and not *vice versa*.
- (6) It is a welcome reaction against what may be called without disrespect, "the pig-trough philosophy

of utilitarianism." The highest values that we know are moral, cultural, and spiritual. Material goods should be their handmaid, and not their master.

Summing up the case for idealism, Garner writes, "It may be said of much of the criticism which has been directed against the idealistic theory that it is unfair, exaggerated, and based upon a misconception of the theory itself. In so far as the idealists exalted the State above all other human associations, regarded it as indispensable to the realisation of the good life, and held that, as such, it is entitled to the loyalty of the citizen and may demand sacrifices of him to preserve its existence, that it is the sole source of law and of rights, and that in it alone, is the individual capable of realising fully the ends of his existence, and that without it human progress and civilisation would be impossible, the theory is entirely sound and irreproachable."\*

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## CHAPTER XV.

### DEMOCRACY.

#### I. Democracy under Revision.—

H. G. Wells describes the present age as the Age of Democracy under Revision. The age which has drawn to its close under our very eyes he describes as the Age of Democracy Ascendant. It is a commonplace observation that people to day are not as hopeful of democracy as they were in previous generations. Their attitude is one of caution or criticism. The World War, in the words of Woodrow Wilson, was fought to make the world "a safe place for democracy." But the problem which has confronted us since then is, how to make democracy safe for the world. The years succeeding the War have shown clearly that democracy is not an open "sesame" to peace, prosperity, and progress. In the multitude of voices, we do not necessarily find wisdom. The extension of the franchise to the largest possible number of men and women is not synonymous with civil and political liberty. We no longer hope with Bentham that we can radically improve "this wicked world by covering it over with Republics" We are more sober now, if not altogether disillusioned. Ludovici expresses the profound discontent of the present generation with democracy when he asks the rhetorical question, "who believes in democracy nowadays? Who believes in Parliamentany government, in the brotherhood of men, or in universal suffrage?" He would readily agree with Alcibiades in regarding democracy as "acknowledged madness."

Democracy is being attacked to-day from various angles, both by reactionaries and revolutionaries. It is attacked

with much vehemence by believers in autocracy and dictatorship. Many of these advocate the gospel of direct action, according to which a well-organised, strong-willed, and assertive minority should impose its will upon the helpless majority by remorseless terrorism, if necessary. The philosophy of direct action as expressed by Oliver Cromwell, in a different context, is, "What's for their good, not what pleases them — that's the question." The principal arguments used by the believers in direct action, as stated by Hearnshaw, are:

- (1) Parliament does not adequately represent labour.
- (2) Political methods are not suited to the settlement of industrial questions.
- (3) Direct action is more prompt and effective than political action.
- (4) Minorities are usually right and the majorities are wrong.

Therefore, majorities should be disregarded and coerced for their own good. Direct action, in one of its phases, means the unreserved use of industrial power. "It is a clear assertion of the antagonistic principle of oligarchy and ultimately of despotism."

H. G. Wells is convinced that since the War there has been a growing distrust and discontent with the politicians and the political method evolved by parliamentary democracy. The magic, he says, has gone out of the method of Government by general elections and "democracy is entering upon a phase of revision in which parliaments and parliamentary bodies and political life as we know it to-day are destined to disappear." The root of the trouble Wells finds in the indifference, ignorance, and incapacity of the common man towards public affairs. The ordinary voter, he believes, does not "care a rap" for his vote.

In the face of all these criticisms, it is foolish to assume naively that democracy has an assured future before it, and

that it will prove to be the panacea for all our social and political ills. It may be safely said that unless we can remedy the defects of democracy, which are coming more and more to the forefront, democracy will have to give place to some other form of political organisation.

## II. The Meaning of Democracy—

Democracy is not a mere form of government. It is a type of State as well as an order of society. Even friends of democracy have at times interpreted democracy to mean only a form of government. Thus J. R. Lowell says that democracy is only "an experiment" in government. Lincoln defines it as "government of the people, by the people and for the people." Seeley describes it as, "a government in which everyone has a share." Dicey defines it as a form of government in which "the governing body is a comparatively large fraction of the entire nation." Even Lord Bryce, in his monumental work, *Modern Democracies*, treats it as only a form of government. In the face of all this, well may we exclaim "God take care of our friends, we shall take care of our enemies!"

Democracy, we repeat, is not merely a form of government. It is not even primarily a form of government. A democratic government implies a democratic State, but a democratic State does not necessarily mean a democratic government. A democratic State is consistent with any type of government—democratic, autocratic, or monarchic. It may place supreme authority in the hands of a dictator, as the U. S. A. virtually does in times of crisis in reference to its President. As Hearnshaw remarks, all that a democratic State means is that the community as a whole possesses sovereign authority and maintains ultimate control over affairs. "Democracy as a form of state is merely a mode of appointing, controlling, and dismissing a government."

In addition to being a form of government and a type of State, democracy is an order of society. A democratic society

is one in which the spirit of equality and fraternity prevails. Such a society does not necessarily imply a democratic State or a democratic government. The Mahomedan society is on the whole democratic, although it does not generally possess a democratic State or a democratic government. The Russian society before the War is another example of the same.

The meaning of democracy is not exhausted even after interpreting it as a form of government, a type of State, and an order of society. It invades the realm of industry too. There are many to-day who claim that the battle for democracy will not be complete till industry is entirely democratised. They argue that, while democracy has made great strides in the social and political fields, it has made very little advance in the economic or industrial field. Some of these look forward to socialism as the next step in democracy. Whether their claim is right or not, we must admit that no society can call itself entirely democratic if it uses democratic methods in some fields and autocratic methods in others.

*Direct and representative forms of democracy*—Democracy in its narrow sense means rule by the Many.\* For its origin it goes back to the old Greek city-states, all of which enjoyed complete local autonomy. They experimented with different forms of government—monarchy, tyranny, aristocracy, oligarchy, and democracy. There was considerable speculation as to which one of them was the best. After weighing the arguments for and against the various forms, Aristotle gave his verdict in favour of polity or a moderate form of democracy. The type of democracy which prevailed

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\* Thus, Bryce uses democracy to denote "a government in which the will of the majority of qualified citizens to constitute the great bulk of the inhabitants, say, roughly, at least three fourths, so that the physical force of the citizens coincides (broadly speaking) with their voting power." *Modern Democracies*, Vol. I, p. 26.

in the Greek city states was pure or direct democracy. All the freemen met together in general assemblies, passed laws and executed them, received ambassadors, and acted as jurymen. This type of democracy was revived in mediaeval times by Italian city-states. The Forest Cantons of Switzerland also had direct democracy which has come down to modern times. Rousseau in the eighteenth century was a powerful advocate of this type of government. He deprecated indirect or representative democracy. But even he saw the difficulty of realising direct democracy on a large scale under modern conditions. Thus he says that pure democracy presupposes many things difficult to combine. It presupposes—

- (1) a small State, in which people may be easily assembled, and in which every citizen can easily know all the rest;
- (2) great simplicity of manners;
- (3) considerable equality in rank and fortune; and
- (4) little or no luxury.

Present-day experience shows that democracy of the pure and direct type is an absolutely unattainable ideal. The only type which is possible for us to-day is the indirect or representative type. According to it the actual administration of affairs is taken from the hands of the people and is vested in delegates. The nearest approach that we find to direct democracy in some modern States is in the form of the referendum, initiative, and recall. These devices are by no means capable of universal application. Some of the other devices which are much more common are the widening of the electorate, responsibility of government to the majority party, frequent elections, and local self-government. Democracy and Parliamentary government are not necessarily identical, although for England and other countries which have adopted the English political model, democracy is indissolubly connected with Parliament.

*Forms of government*—The time-old classification of

governments into monarchy, aristocracy, and democracy does not have much value for us to-day. Most governments at present are of a mixed type. They include the monarchic, aristocratic, and democratic elements in various degrees. The English constitution may appear to be monarchic on the surface. But it is fundamentally democratic, with a strong tinge of aristocracy. What experience shows is that a sound democracy should make room for, and include, a sound aristocracy—not an aristocracy of birth or wealth, but an aristocracy of intellect, ability, and character. Bryce remarks that all governments are in fact aristocracies, in the sense that they are carried on by a relatively small number of persons.

There are different types of democratic governments to-day. Bryce says—

- (1) they can exist under a republic or a nominal monarchy;
- (2) they can exist under a rigid or flexible constitution.

But they are all based on the doctrine of popular sovereignty. As a consequence of this feature, the right of raising revenue and appropriating it to the several services of the State belongs in all these systems to the representatives of the people. They are all worked by political parties.

*Democracy in its broader sense*—In its broader sense democracy is “a political status,” “an ethical concept,” and “a social condition.” It means faith in the common man. Or, as A. D. Lindsay states it, it implies that all beings have a worth in themselves. No one is a mere means to another’s end. The well-known formula of Kant in this connection is, “So act as to treat humanity, whether in your own person or in that of any other, in every case as an end, and never merely as a means” In the words of a seventeenth century English writer, not so well known, “The poorest he that is in England hath a life to live as the richest he.”\*

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\*Quoted by A. D. Lindsay in *Parliament or Dictatorship*.

The value of personality which is the crux of democracy does not mean that all individuals are alike or equal. Democracy admits the fact that nature has not endowed all men equally. What it seeks to do is to reconcile the principle or sentiment of equality with the fact of natural inequality. It attempts to bring into existence "a social machinery which would make for the enrichment and expression of personality." "Democracy in practice," says C. D. Burns, "is the hypothesis that all men are equal which is used in order to discover who are the best."

Viewed in this manner Prof. Smith says that democracy is a religious principle and that the democratic way of life is the genuinely religious way of life. Democracy, we believe, is a practical manifestation of the enthusiasm for humanity. It is a concrete attempt at the reconciliation of the apparently contradictory principles of liberty, equality, and fraternity, in order that every individual in the community may be enabled to attain the highest good possible for him. We do not agree with Sir Fitzjames Stephen when he says, "No room is left for any rational enthusiasm for the order of ideas hinted at by the phrase, 'Liberty, Equality and Fraternity'; for..... there are a vast number of matters in respect of which men ought not to be free, they are fundamentally unequal, and they are not brothers at all, or only under qualifications which make the assertion of their fraternity unimportant."

### III. The Classical Case for Democracy.—

Shutting our eyes for the time being to the defects of democracy in its actual working, let us see what reasons can be advanced in favour of the democratic principle. These reasons are :—

1. The precautionary reason.
2. The psychological reason.
3. The educational reason.
4. The moral reason.
5. The practical reason.

The first three are fully dealt with by Prof. W. E. Hocking as follows:—

1. *The Precautionary Reason*—Democracy gives us a guarantee that the will of every one in the community shall be duly considered, and that no one shall be neglected in what is done by the government. This does not mean that democracy promises to carry out the wishes of everybody, for that is clearly impossible in any society. What it means is, that "the poorest he" shall have as much freedom to express his mind as "the richest he." If efficiency were the only test of a good government, a bureaucracy or even a dictatorship might be a better form than democracy. But efficiency is not the only test. The best government is that which makes the best possible citizens. Autocracy or bureaucracy will function very satisfactorily if we can select our rulers well. But the trouble with these forms is that they are not particularly interested in any section of the community. In an autocracy or a bureaucracy, individuals and groups of individuals may suffer here and there without affecting the rest of the community. In a democracy, on the contrary, at least in theory, there is not a single man who can suffer without the rest of the community sharing in his suffering. An autocracy or a bureaucracy, in other words, is partially paralysed. A democracy, on the other hand, is considered to be equally sensitive to the wishes and sufferings of all its members. In an autocracy or a bureaucracy there are many out-going connections from the government to the individuals in the form of orders and regulations, but there are not an equal number of in-coming connections from the individuals to the government in the form of wishes and desires. Democracy, says Prof. Hocking, ties a nerve to every individual. It makes a connection between him and the centre. In it there are as many in-coming connections as there are out-going connections. "In a complete democracy no one can complain that he has not a chance to be heard." (A. L. Lowell).

2. *The Psychological Reason*.—Efficiency, as said above, is not enough. Soulless efficiency killed Rome. In every form of government, we shall always try for government by specialists. But specialists do not know the whole mind of the people. Specialisation warps the intellect. The specialist knows his side of the case exceedingly well. But he does not always know how his prescriptions affect the people at large. It is the wearer who knows where the shoe pinches. What good government requires is a co-operation or working alliance between the specialist and the layman, and democracy best fulfils this condition. Prof. Hocking goes so far as to say that to be governed by the highly educated man alone is a calamity. Such a ruler is apt to be abstract and doctrinaire, far removed from the concrete situations of life.

If we turn our attention for a moment to different professions, we find that the specialist there is more and more taking the lay public into his confidence. The physician who has generally been an autocrat hitherto is now trying to make the patient cure himself by making him a partner in the process of healing. Similarly, the expert in music seeks to impart knowledge regarding the rules of music and at the same time takes into account the judgment of the people as to what is good music without pronouncing *ex cathedra* what music people should appreciate. Likewise, democracy invites the man in the street to co-operate with the government in devising common solutions for common problems. The first thing that democracy does is to explain why, and the moment it does that it establishes a sympathetic connection between the government and the people. The individual, instead of being a mere passive recipient, becomes an active participator. "Democracy", says Prof. Hocking, "is the union of the conscious and the subconscious mind".

3. *The Educational Reason*.—Democracy is a large-scale experiment in public education. It stimulates interest and is informative. It tends to create a higher type of

mentality among the people whom it governs. When a general election takes place every reasonable opinion is given a chance to express itself. Issues are discussed in all their bearings, and what was private soon becomes public. Speeches are delivered; articles are written; programmes are outlined; and policies are propounded. The result of all this is a phenomenal rise in the popular understanding of the problems of government. In the course of a few days, perhaps weeks, the public becomes well-versed in the political problems of the day. Choices are made after much discussion, deliberation, and judgment. The views of every one become clarified, modified, and improved. If at the beginning of this process of joint thought and discussion there are as many views as there are individuals expressing them, at the end of the process we arrive at a common mind or general will. The mind of each individual is enlarged and enlightened. The slow effect of the democratic government is to raise the mental level of the people who take part in it. C. D. Burns writes, "All government is a method of education, but the best education is self-education; therefore the best government is self-government, which is democracy."

4. *The Moral Reason.*—Democracy ennobles the people. It rests on the principle that what a man earns for himself by his own efforts is of much greater value to him than what is handed down to him by some one else. It is the best aid to self-help, initiative, and the cultivation of individual responsibility. The supreme merit of democracy, says J. S. Mill, lies in the fact that "it promotes a better and higher form of national character than any other polity whatever." Thus we find that in the U. S. A. democracy has meant an enlargement of human sympathy. The growth of democracy there has resulted in the growth of philanthropy and in the provision of opportunities for public education supported by taxation. President Lowell rightly remarks that the supreme test of excellence in a

government is not order, economic prosperity, or even justice. "It is the character a polity tends to create in the citizens by whom it must be sustained. The best government in the long run is one that nurtures a people strong in moral fibre, in integrity, industry, self-reliance, and courage." It is needless to say that democracy at its best answers to this description. Bryce likewise says that the manhood of the individual is dignified by his political enfranchisement. Democracy, we may add, is conducive to the development of the all-round man. Under no other form of government self-realisation is as easily possible as under democracy.

5. *The Practical Reason*—From the practical side, democracy has several advantages.

(1) It promotes patriotism. The man who has no vote is apt to become disgruntled, or at least indifferent to political questions. It is the realisation of the fact that the government of the day can be promptly changed if it is not sensitive to public opinion, which makes the average man take a genuine interest in the affairs of his country. The French people, says Laveleye, never really loved France until after the Revolution when they were admitted to a share in the government. Since then they have become passionate lovers of it.

(2) A corollary of the fact that democracy promotes patriotism is that it reduces the danger of revolution. Democracy is government by persuasion. Every other form of government rests to a greater or less extent on force. Democracy believes in discussion and deliberation, and this is the only method which is bound to succeed finally. As Hearnshaw says, "However long it may take to convert and educate the masses, only by means of their conversion and education

can any cause be made finally to succeed." It is to the eternal glory of popular government that it bases itself on freedom of speech, freedom of assembly, and concerted action.

Besides, democracy is the only form of government where both order and progress can easily go together. This fact constitutes another check on the possibility of revolution. Dictatorship give us order, but not much progress, and what little progress there may be is determined by one person or by a small minority and may have no popular support behind it.

A further way in which democracy acts as a check on revolution is by emphasising the principle of equality. It knows of no sharp social cleavages and provides, on the whole, an open road to talent. Social inequality and social discontent which often prevail in other forms of government are bound to take a revolutionary turn when an opportune moment presents itself.

- (3) Some writers claim that democracy makes for greater efficiency than any other form of government. They argue that "popular election, popular control, and popular responsibility are more likely to insure a greater degree of efficiency than any other system of government".\*
- (4) The doctrine of the general will, if it is to have any practical meaning at all, should express itself in the form of a democratic organisation. We do not deny that in exceptional cases general will may be best expressed by the vote of one person

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\* J. W. Garner : Political Science and Government p. 390.

or by the votes of a few persons. But, as a general rule, it requires a democratic organisation.

#### IV The Case Against Democracy.

Whatever the merits of democracy may be in theory, there is no doubt that it has been accompanied by many evils in daily practice. In its actual working democracy has not fulfilled all the high hopes entertained of it by its early apostles. Without attempting at this point to evaluate the many criticisms that have been levelled against it both by friends and foes, we shall simply enumerate them for what they are worth.

1. The attacks on democracy in its early stages took an aristocratic turn. There were many who felt that democracy meant rule by the irresponsible multitude. Aristotle regarded it as a degenerate or perverted form of constitutional government. Mill feared the tyranny of the majority. Lecky thought that democracy was opposed to liberty. Even to-day there are those who claim democracy attaches undue importance to quantity rather than to quality. Votes are counted and not weighed. Special training, conscientiousness, judgment, and expert knowledge receive little consideration. Democracy rests on the assumption that every man is the equal of every one else. The practical consequence of this assumption is that government falls into the hands of the ignorant, the untrained, and the unfit. Democracy glorifies numbers. It counts heads without taking into account their content. It is a government by crowds. It makes the majority supreme, even if it be a very narrow majority. The minority which may have greater knowledge and better judgment is spurned. In a democracy it is difficult to secure enforceable responsibility. Popular election, short tenures, and rotation in office are not conducive to responsibility.

2. There are others who adopt a somewhat different line of argument from the one sketched above. They argue that

democracy in practice leads to oligarchy of the worst kind. Talleyrand describes it as "an aristocracy of blackguards." Power in a democracy falls into the hands of the demagogue, the grafter, and the "boss." Leaders of first-rate ability are not chosen. People are jealous of superiority. Therefore, they choose popular men rather than able men to lead them. History abounds in instances of people rejecting such outstanding men as Woodrow Wilson and Venezelos in preference to second and third-rate men who were extraordinarily skillful in adjusting themselves to popularity. From this it would appear that the only qualifications required of a leader in a democracy are, that he should be a good psychologist, a compromiser, and one who is willing to demean his own principles when necessary. The "strong, silent man" is often left in the cold, and the consequence is that men of ability and distinction do not offer themselves as candidates.

The average voter, it is said, is not much interested in matters of State. On many subjects that are discussed, there is no general will or common mind. The apathy of the voter in many democratic countries is proverbial. When an election takes place he has to be dragged from his office or other place of business to make him record his vote. It is estimated that in the U. S. A., on an average, less than half the population qualified to vote exercises its privilege. In one state in the U. S. A. only six per cent. of the voters went to the polls at a recent election. The inevitable consequence of such indifference is that power easily passes into the hands of a few unscrupulous individuals who are ever ready to exploit the people by their high-sounding promises and specious arguments.

3. In close connection with this argument it is often said that democracy means in practice the evils of party politics. While the party system is indispensable to a democracy, it

(1) encourages hollowness and insincerity;

- (2) carries the national divisions into local elections;
- (3) leads to the "Spoils" system; and
- (4) debases moral standards. \*

The party machine is so well worked that the individual citizen who wants to exercise his judgment is given little or no freedom. He has to choose between two or more candidates who may be either knaves or fools and for none of whom he cares, and decide between two or three issues, none of which meets with his approval. In the words of A. R. Lord, "to the critics of representation the party system seems to be too mechanical a method of dividing opinion to represent the popular will with any approach to exactness." †

4. The well-known French writer, Faguet, describes democracy as the cult of incompetence. This is the judgment of some others, too, who are not particularly prejudiced against democracy. It is freely said by some that democracy means an irresponsible government and that it fails to lay down sound lines of policy. It is specially weak in the quality of its ministers, in national defence, in foreign relations, and in questions of diplomacy. It is a government by amateurs or those who are hopelessly immature. It rests upon a broken reed inasmuch as it rests upon the common multitude which is ungrateful, emotional, and passionate. The common people do not reason much. To-day they laud a man to the skies and to morrow they cast him down in the mire. They are inconstant and fickle in their attachment both to principles and to persons. They are not swayed by any consistent and unifying ideals. At times they are given to idealism and hero-worship; they are easily swept off their feet by such shibboleths as "self-determination of nations" and by such catchwords as "Hang the Kaiser." At

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\* Lord Bryce : *Modern Democracies*, Vol. I. Ch. XI.

† *Principles of Politics* : p. 162.

other times they become obscurantists and obstruct all progress. They are short-sighted and do not see far enough into the future. In some democratic countries, critics notice a tendency among the people to excessive interference in detail by means of mandates, petitions, and protests. In others they find a tendency to insubordination and anarchy. Leaders are flouted. In the words of Hearnshaw, they are like schoolmasters elected by their pupils and liable to be punished and dismissed by them. \*

5. It is claimed that democracy is a government by the people. The critic asks whether this is really so in practice. Who are these people in whom wisdom, justice, and power are supposed to be embodied? Does it mean the majority of electors? If it does, what are we to say to those who claim that the majority of voters do not necessarily represent the majority of the people? With the coming of the three-party system in England and the development of the group system in some other countries, those who actually rule represent frequently the minority of the community, and not the majority. Even if it be granted for the sake of argument that majority vote often represents majority opinion in the country, we have to face the further querry whether the majority is necessarily right. The voice of the people may very well be the voice of the devil. To assume that representatives always "represent" the will of the people is a mistake. They may consciously or unconsciously misrepresent it. They are not always free men. They are subject to strict party discipline and are at times more afraid of newspapers and of vested interests than of their electors.

6. One of the forcible arguments used by Faguet against democracy is that it is a biological misfit or a biological monstrosity. What he means by this criticism is

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\* For a detailed criticism of democracy see Hearnshaw: "Democracy at the Crossways."

that democracy is not in line with the process of evolution. He argues that the higher up we ascend in the scale of evolution the greater is the degree of centralisation; different parts of the body are assigned different functions. Democracy, says this writer, is anti-evolutionary because it does not have a central nervous system. Instead of setting aside one part of the organism to act as the brain to do the thinking and planning for the whole organism, it expects the brain to be located anywhere and everywhere in the organism. Casting off all figurative language, what Faguet means is that government should be in the hands of an intelligent oligarchy and that the many should implicitly obey it. He interprets the democratic form of government to mean extreme decentralisation and thorough incompetency.

7. A serious charge laid at the door of democracy is that it is a very expensive form of government. Democracy means organisation of opinion, propaganda, and frequent elections. All this involves a great deal of expenditure. For instance, millions of dollars are spent every four years in the U. S. A. over presidential elections. In recent years half a million dollars was spent on the election of a single Senator. Money which should be used for productive purposes is spent on electioneering and "nursing the constituency." The wastefulness of democracy is a fact which cannot be easily controverted. There is waste, not only of money, but also of time and opportunity. A recent writer describes democracy as an "exaggerated committee," and humourously defines a committee as seven men doing in seven days what one man can do in one day. This definition illustrates the general principle of waste involved in democracy. Parliamentary government is slow-moving, for it has to depend upon persuasion and the securing of a majority.

8. Even the moral value of democracy has been seriously questioned by some. These critics say that there is always

in democracy a temptation to falsification and lie. A calls B a liar and B pays back the compliment to A by calling him a bigger liar. Issues are to be vulgarised and popularised before they can make an appeal to the people. Questions are not discussed dispassionately. They are discussed in such a manner as to catch votes. There is little or no attachment to truth or justice as such. The governing consideration is the securing of popular support by the vote.

Bribery and corruption are said to be the common abuses of democracy. In his chapter on "The Money Power in Politics,"\* Bryce shows that there are several instances of electors, members of legislatures, administrative officials, and even judicial officials succumbing to the temptation of illicit gain. This abuse, however, is on the whole on the decline to-day.

9. The educational value of democracy, it is said, is a process of diseducation, rather than of education. It flatters people. It produces a pretentious proletariat. It hides from people their deficiency. It engenders in them a false sense of equality; every man thinks that he is as good as any body else, for the governance of his country. It calls for no effort and training. It lowers standards. It makes people think too well of themselves in literature, science, and art. Appeal is made to mob psychology, and every effort is made to pander to the people. People as a whole are indifferent, if not hostile, to the advancement of education, science, literature, and art. They are more apt to run counter to scientific conclusions than the privileged classes. The civilisation which a democracy produces is said to be "banal, mediocre, or dull." (Burns).

Besides, the mere fact that literacy is wide-spread in democratic countries does not mean that people there become wise or balanced in their thinking. The present-day

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\* Modern Democracies, ch. LXIX.

tendency is for reading to become more and more a substitute for thinking. Lord Bryce rightly says that a democracy taught only to read, and not also to reflect and judge will not be the better for its ability to read. C. D. Burns writes sarcastically that education is indeed used by some in order to read the betting news and health in order to hold more strong drink.

10. Several critics have drawn attention to the fact that there is in democracy a "large and increasing mass of hasty and ill-digested legislation."\* The average representative not infrequently feels that the only way in which he can justify his existence in the legislature is to help to place some new law or another on the statute books. He does not particularly care to investigate whether such a law has been passed previously or not, whether it is absolutely necessary and sensible, and whether it will be workable. His chief aim is to add a feather to his cap and appear well before the people who have sent him up as their representative. In modern legislatures there is indeed a craze for legislation.

11. There are many instances in democratic countries of local interests tending "to obscure and to defeat the interests of the State at large."† In the scramble for power and patronage, the general well-being of the State is apt to be brushed aside in order to do some good to a limited number of people. Representatives vie with each other in obtaining whatever they can, irrespective of its effect on the welfare of the country at large in order to curry favour with their electorate. It is no one's business to look after the interest of the public. There is no "sense of the community", and the consequence is that the unity of the national spirit is put to great strain. A tendency which is becoming more and more marked in some of the Western countries is for organised

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\* A. R. Lord : *Principles of Politics*, p. 163.

† A. R. Lord : *Principles of Politics*, p. 164.

minorities to subordinate public welfare to their own purposes.

12. One grievous failure of the American democracy, says President Lowell, is the misgovernment of her large cities. The evil seems to be chronic, and as yet no enduring cures have been found.

*Lord Bryce* sums up the chief faults observable in modern democracies as follows:

- (1) "The power of money to pervert administration or legislation.
- (2) "The tendency to make politics a gainful profession.
- (3) "Extravagance in administration.
- (4) "The abuse of the doctrine of Equality and failure to appreciate the value of administrative skill.
- (5) "The undue power of party organisations.
- (6) "The tendency of legislators and political officials to play for votes in the passing of laws and in tolerating breaches of order." \*

#### **V. Evaluation of the Criticisms against Democracy.**

Many of the above criticisms undoubtedly contain elements of truth. But for the most part they are mere caricatures. It is interesting to note that some of them mutually cancel each other. Thus, according to some writers, democracy means hero-worship and idolatry, while, according to others, it means insubordination and anarchy. Some say that democracy is given to idealism and worship of abstract theory, while others contend that in a democracy there is no place for sentiments and principles. These mutual contradictions contain their own refutation.

1. If democracy is a bad form of government we are justified in asking, what is the way out? Is there any other form of government which is as good as democracy, if not better? Our answer is in the negative. The world has tried

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\* *Modern Democracies*, Vol. II, p. 504.

aristocracy and oligarchy at various times and has found them to be generally failures. We cannot go back to them; for, in the striking words of C. D. Burns, "no one denies that existing representative assemblies are defective; but even if an automobile does not work well, it is foolish to go back into a farm cart, however romantic".\* The world is not yet fit to inaugurate the type of society which the philosophical anarchists have long dreamed about. The present tendency seems to be in the direction of dictatorship. It is perhaps too early to say whether dictatorship in the long run will be a success or failure. Nevertheless, there is no gainsaying the fact that, inasmuch as dictatorship is a denial of individual liberty and initiative, it is contrary to the development of personality, which we conceive to be the supreme end and destiny of man. However benevolent modern dictatorship may be, it is a despotism. It suppresses all criticisms and all organisations which are not its own. In the words of Lord Lothian, it promises temporary stability and order in the trying circumstances of the time.

A. L. Lowell writes: "No form of government is a panacea for all human ills; and it is mischievous to search for one instead of improving what we have. The alternative to democracy to-day is autocracy, wielded by a ruler, elected or self-chosen, who will inevitably place restraints upon liberty, not in industry alone, but before long on the free expression of opinion, and the right of combination; for autocracy cannot live in the presence of organised opposition."

2. Democracy is blamed to day for many of the evils which the Great War has brought in its train. This does not seem fair. The world-wide depression and unemployment which we witness everywhere are the result of the unsettled conditions of the world for which democracy alone is not responsible. These conditions cause difficulties to all

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\* C. D. Burns: Democracy, p. 89.

forms of government, whether they be democratic or autocratic. Poverty, unemployment, and social discontent are dogging the steps of practically every government. A situation of this kind is not one in which we can impartially judge the merits of democracy. As A. L. Lowell observes, "It is not fair to rate the soundness of a man's judgment by his behaviour when fighting, when drunk, or when scared. Nor can we measure democracy by events that occur under highly abnormal conditions."

3. Faguet describes democracy as an unbiological arrangement and claims that it expects the brain to be located anywhere and everywhere in the social organism. This is not a sound criticism. Democracy is not a plea for decentralisation. As said above, a sound democracy makes room for, and includes, a sound aristocracy. In the words of Mazzini, democracy is "the progress of all, through all, under the leading of the best and wisest." Modern democracies realise that government is an art, and that it can be safely entrusted only to those who have made a speciality of it. Democracy, we repeat, does not exclude government by experts. While in an aristocracy the expert may hold himself aloof from the people, in a democracy he is expected to possess the necessary social virtues which will enable him to feel at home with the people whom he is called upon to govern. It is needless to say that the difference is in favour of democracy. British democracy abounds in men of ability and distinction, although the British cabinet government is often described as a "government by amateurs."

In the light of all this, we refuse to believe that democracy is an incompetent form of government. Some writers draw a contrast between the political method and industrial method to the disadvantage of the former. They argue that it is impossible to infuse the spirit of true democracy into large scale government; and that the only way in which political democracy can be made to succeed is to introduce

into it the autocratic methods of industry. We do not accept this point of view, which, as Dr. A. D. Lindsay points out, "hopes by Satan to cast out Satan." "Industry", says the same writer, "drills men like machines and demands impoverished and not enriched personalities."

4. Those who are uncompromisingly opposed to democracy point the finger of scorn at the common people and say that they are incapable of governing themselves. We demur to this point of view. We admit that the choice of leaders in a democracy has not always been happy. But for this the people are not altogether to blame. Choosing wrong type of leaders may be partly the result of autocracy, and not of democracy. Prestige attached to wealth, power, and rank in society is not yet dead. The remedy is not to lessen democracy but to increase it. A further reason why able men are at times not chosen as leaders is that they lack social graces and the capacity to make themselves intelligible to the common people. C. D. Burns observes that the intellectualist scholar and the specialist in any given problem tend to forget that men are chosen as representatives or leaders in politics, not as intelligent but as intelligible. "The representative must be intelligible. It is fortunate if he is also intelligent, but intelligible he must be." It is a mistake to think that people always make wrong choices. Experience in democratic countries shows that people are better judges (a) of men than of measures; (b) of negative measures than of positive ones; (c) of questions involving general policies than of technical and detailed questions; (d) of matters which involve ethical principles (e. g. questions of foreign policy) than of those which arouse their emotions and passions.

If people are to make wise choices, it is advisable to present to them one issue at a time and present them in clear and unmistakable terms. It is not wise to burden them with too many details or technicalities. In reply to those who claim that the average man is not interested in governing

himself and that the greatest indictment of democracy is the apathy of the voter, we may say that other forms of government do not show better results. If there are periods of lull in popular interest in a democracy there are also periods of intense interest and keen devotion. A non-democratic form of government is sure to win the support of people so long as it confers boons upon them, but the moment it imposes burdens, there is profound discontent. It is too early to say whether the present intense devotion to dictatorship will last long and hold people together even when conditions change.

6. Although some of the present-day critics of democracy decry the principle of representation, they are unable to free their minds of it entirely. No reputable thinker to-day is prepared to justify unadulterated autocracy. It is instructive to find that even the most ardent supporters of dictatorship justify it on the plea that it is truly representative of the people. Thus, Major Yeats-Brown claims that Fascism is more representative of the people than is any modern democracy. His argument is that democracy is not the opposite of dictatorship, but that it is ill-adapted to the difficulties of modern life. Whether we agree with his interpretation or not, the point is that the principle of authority on the basis of representation has become a permanent part of political philosophy to-day. If we are agreed on this point, the further question is as regards the most effective way in which people can be represented. We demur to the point of view which claims that dictatorship is truly representative of the people, especially when we take into account the fact that it stifles criticism and a free expression of opinion.

7. To the charge that democracy necessitates party government and that party government is an unsatisfactory way of dividing opinion, our reply is

- (a) Parties are inevitable, for without them it is impossible to work a democratic government. Parties bring order out of chaos. They mould and

educate public opinion. As Bryce remarks, "Parties keep a nation's mind alive, as the rise and fall of the sweeping tide freshens the water of long ocean inlets."

(b) "Party discipline," to quote the same writer again "puts a check on self seeking and corruption."

8. To the charge that democracy means diseducation there is perhaps no satisfactory answer on the basis of facts. Democracy does create pretence and flattery of the masses. Standards are lowered in order to reach the mob. People think too well of themselves in art, science, and literature. While all this is true, we may well ask, what is the way out? In other forms of government there is even less opportunity for popular education. Besides, proper humility is not inconceivable in a democracy. The diseducation of the masses can be gradually overcome by instilling into people a spirit of teachableness. Already we see signs in that direction. We concede to the opponents of democracy that there is considerable waste and extravagance in a democracy. But our plea is that this is not a necessary evil. Education of public opinion will go a long way in overcoming it.

10. Alongside of waste and extravagance, bribery and corruption are common in most democracies. But for these we have to blame the general life of the country and not democracy alone. Lowell is right when he says that we cannot fairly attribute to democracy evils tolerated in commercial life. "Right and wrong have always existed and always will. A lack of probity in public life is no new thing." "There is certainly less corruption among office holders now than there was in Europe in the eighteenth century, but popular forms of government will hardly be rid of it until a higher standard is exacted on the street, and those who violate it are socially tabooed."

11. It is almost a fashion to-day to proclaim the death of democracy. Like many other fashions, it is possible that

this fashion has no solid foundation. After experimenting with dictatorship for a while Spain has returned to democracy. In countries like England, France, and the U. S. A., where democracy has been developed fully, and where it has functioned successfully for a long time, there seem to be no serious signs of its abandonment. All that the present wave of enthusiasm in favour of dictatorships indicates is that democracy should adjust itself to changing conditions. Andre-Maurois, a French writer, says, "The fact that a country lives under parliamentary rule is no reason why it should refuse an individual leadership for a defined purpose and a fixed period..... To adjust democracy would not mean opening the door to dictatorship, but rather keeping dictatorship at arm's length."\*

#### VI. Remedy and Conclusion.

The conclusion to which we are inevitably led is that democracy has no absolute worth, it has only conditional worth. It does not contain a panacea for all the ills of the world. The worst failings of democracy are due to inmaturity and are likely to be overcome with growing experience. Its supreme value is ethical and educational. The foundation on which it rests, viz, the worth of every human personality, is unshakable. We believe De Toqueville is right when he says, "The progress of democracy seems irresistible, because it is the most uniform, the most ancient, and the most permanent tendency which is to be found in history." A recent writer says, "Regarded as an idea, democracy is not an alternative to other principles of associated life. It is the idea of community itself ..... Democracy will come into its own, for democracy is a name for a life of free and enriching communion."

Democracy, we believe, is a right organisation, embodying a sound principle. The evils which we see in it are not

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\* Parliament or Dictatorship "Spectator Series," pp. 31-2

inevitable. They can be cured by the people themselves by proper education, reflection, and experience. We do not agree with those who say that the only way to cure the evils of democracy is to end democracy. What needs to be ended is the prevailing international anarchy, using such means as an effective league of nations, planned economy, disarmament, and the removal of tariff and racial barriers.

If, as we believe, democracy requires to be mended, and not ended, what are the specific ways in which this process can be accomplished. Several writers have given their attention to this question. Some address themselves to the changes in people's education and character which they consider to be necessary if democracy is to succeed. Others propose specific changes in the machinery of the democratic organisation to make it better suited to changing conditions.

Turning to the first group of writers, we find that Prof. Hearnshaw lays down the following conditions :—

(1) A high standard both of honesty and of honour.

Moral soundness is absolutely necessary. Without clean hands and a pure heart, particularly in the leaders, democracy is bound to fail. A corrupt democracy is the vilest and most hopeless of political organisations. People in a democracy need to have a spirit of proud integrity, a determination to be self-sufficient, and a delicate sense of honour. Democracy calls for a fundamental honesty of men in general, and their love of justice. There should be equal rights for everybody, equity in law, and equality of opportunity.

(2) A high level of intelligence and a sound system of education. Lack of common sense is dangerous in a democracy. Without a spirit of "normal reasonableness" on the part of the people at large, democracy will degenerate into mob-rule

or lead to dictatorships. Well-intentioned fools are worse than intelligent villains. We need a sound system of popular education if Lincoln's dictum is to be true : "You can fool part of the people all the time, and all the people part of the time, you cannot fool all the people all the time."

(3) A clear consciousness of the community. Democracy calls for "a strong sense of solidarity, and intense conviction of unity, a pervasive feeling of communal life." Racial feuds, religious schisms, class conflicts, and social cleavages are bound to weaken democracy. Nowhere is it more true than in a democracy that

"The strength of the wolf is the pack  
And the strength of the pack is the wolf."

(4) A sound public opinion, a sensitive social conscience, and an effective general will. Democracy cannot be much better or much worse than the prevailing public opinion. Therefore, when and where democracy fails one of the potent causes for it is unsound or ineffective public opinion. To these conditions, we may add,

(5) Social and industrial democracy. If democracy is to succeed, it should invade man's social relationships as well as his economic life.

J. W. Garner lays down the following as the essential conditions of democracy :—

(1) "A relatively high degree of political intelligence, an abiding interest in public affairs, a keen sense of public responsibility, and a readiness to accept and abide by the decisions of the majority,"\* coupled with a respect for the rights of minorities.

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† J. W. Garner: Political Science and Government, p. 405.

- (2) Facilities for elementary education.
- (3) Education in political matters and training in the habits of self-government.
- (4) A high moral level.

Prof. W. E. Hocking states the matter as follows:—

- (1) Democracy cannot be any better than the education, the training, and the efficiency of the people. Success in democracy calls for ability to think behind superficial contiguities.
- (2) Democracy cannot succeed without truth and true data. It means the disinfection of our news, aiming at truth.
- (3) Democracy depends upon the good-will of the masses. To the question whether democracy is possible for the masses, the answer is, is humility possible for them? And to the question whether humility is possible for the masses, the answer is, is religion possible for them? Because religion is a perpetual reminder of man's imperfections. In other words, democracy requires a spirit of humility or teachableness on the part of the people, and this in turn requires a religious spirit.
- (4) Democracy calls for faith of the leaders in the masses. Every man and leader of men, as he grows old, tends to become cynical. There are many things to disillusion him. If democracy is to succeed, it must base itself not on men as they are, but on men as they can be. This means faith. Democracy can thrive only on an inner current of religion and faith.

A. L. Lowell sums up the conditions of successful democracy in these striking words: "The duration of any form of government depends upon how far it develops a people qualified to carry it on, and how successfully it brings to

front those most fit to lead.....Does democracy tend to produce a people disposed to place the general welfare above partial interests, a people with keen sympathy and absence of jealousy between classes, with the will to bear present ills for future good, with foresight and fortitude; and does it select for its representatives and magistrates men who possess these qualities in a high degree? If it does these things the squalls that arise will not disturb its foundations, and it will stand unshaken though storms may rage in other lands. So far as it does not do this the iron of its feet is mixed with miry clay."

Among the practical suggestions advanced for improving the machinery of the democratic organisation, the views of the following writers deserve mention :—

Lord Lothian says.—

- (1) That government should be conducted under guarantees of freedom of speech and criticism, and political and economic initiative for the individual; and,
- (2) That it should be changeable without violence, at the ultimate decision of an adult electorate.

Andre Maurois suggests "an individual leadership for a defined purpose and a fixed period" as a check upon dictatorship. Others suggest a strong executive. Lord Eustace Percy claims that the British constitution saves itself by the Monarchical Prime-Ministership and that "the day when he (the Prime Minister) falls under the domination of a party caucus there will be no alternative to dictatorship." "Parliament's first and supreme duty is, therefore, to make strong Prime Ministers. Their freedom is its freedom; their strength its strength."

Other suggestions made by Lord Percy are :

- (1) Parliament should concern itself with broad questions of policy and not lose itself in petty details. It should deal with taxation and expenditure as

broad issues of policy, and voice grievances arising out of the misdirection of expenditure and the unfair incidence of taxes. "It should abolish the absurd custom of procedure which precludes a reference in almost all ordinary debates, to any questions involving legislation."

- (2) Parliament should take the initiative in formulating bills. It should not depend too largely on over-driven government departments for formulating legislative proposals. It should constitute a series of committees of the House for this purpose. These committees should re-examine the whole field of the relations between government, central and local, and the individual.
- (3) Other committees of Parliament should be constituted "to watch the administrative action of particular departments, to examine departmental orders and regulations before issue, to investigate individual complaints and to make representation to ministers."
- (4) An economic council should be constituted by Crown nomination, as nearly as possible representative, not of economic opinion, but of economic power. Government and Parliament should use this council in their preparation of legislation. It should further examine the whole field of the relation between government and industry.
- (5) The Crown should be given the freedom to create life peers and the House of Lords should have its full share of the task of re-planning legislation.

Writing on "Parliament as it Should Be", Sir Stafford Cripps claims that the three attributes of democracy are—

- (1) That the people must have a free and unfettered

choice of their representatives, with a right of recall at stated periods;

- (2) That the people must signify by their choice the policy that they desire to be carried out;
- (3) That representatives must be able to carry through the desired policy without undue delay and without outside interference from any particular interests and persons.

To give effect to these practical attributes of democracy, Sir Stafford Cripps recommends

- (1) The abolition of the leisurely methods of nineteenth century law-making;
- (2) The House of Commons taking a bold line when it has the support of the country behind it and effectively controlling the manner and *tempo* of the nation's progress, not being brow-beaten by a non-democratic Second Chamber; and
- (3) The formation of functional committees to supervise the legislative and administrative activities of the ministers.

H. Sidebotham believes that Parliamentary system may be consistent with the dictatorship of committees.

Lord Bryce concludes his discussion on the relative merits and demerits of democracy in the following terms :—

If the optimists overvalued the moral influence of democracy the pessimists undervalued its practical aptitudes. It has reproduced most of the evils which have belonged to other forms of government, though in different forms, and the few it has added are less serious than those evils of the older governments which it has escaped.

- (1) It has maintained public order while securing the liberty of the individual citizen.
- (2) It has given a civil administration as efficient as other forms of government have provided.
- (3) Its legislation has been more generally directed to

the welfare of the poorer classes than has been that of other governments.

- (4) It has not been inconstant or ungrateful.
- (5) It has not weakened patriotism or courage.
- (6) It has been often wasteful and usually extravagant
- (7) It has not produced general contentment in each nation.
- (8) It has done little to improve international relations and ensure peace, has not diminished class selfishness, has not fostered a cosmopolitan humanitarianism nor mitigated the dislike of men of a different colour.
- (9) It has not extinguished corruption and the malign influences wealth can exert upon government.
- (10) It has not removed the fear of revolutions.
- (11) It has not enlisted in the service of the State a sufficient number of the most honest and capable citizens.
- (12) Nevertheless, it has, taken all in all, given better practical results than either the Rule of One Man, or the Rule of a Class, for it has at least extinguished many of the evils by which they were defaced.

Our conclusion may well be that of Edward Carpenter: "O, disrespectable democracy, I love you." In the words of T. V. Smith: "If one cannot gain heaven, it is foolish to despair if there still remain in one's hands the means of avoiding hell."

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## CHAPTER XVI.

### CITIZENSHIP.

#### I. The Meaning of Citizenship.

Democracy is no doubt a great boon, but without a spirit of good citizenship it cannot succeed. Even the best form of government is sure to fail if the people for whom it is provided do not possess sound character. Centuries ago Aristotle discovered the valuable truth that the success or failure of a constitution depends on the character and temper of the people. Citizenship calls for a passion and devotion to the State analogous to the passion and devotion that the individual has for his family.

The word 'Citizenship' and the related term 'Civics' are derived from the Latin word 'Civitas', indicating thereby that the civic life had its origin in the city-states of the ancient world. Both Plato and Aristotle assigned a very important place to the training of the individual in all civic virtues. To the Greek thinkers in general, to be a good citizen was practically equivalent to being a good man. Aristotle defined citizenship as the capacity to rule and to be ruled.

Citizenship, like morals, is both a science and an art. It should not only be learnt like other branches of study, but also assiduously practised. It is character in action. It is just another name for social living. No man has a right to be called a good citizen if he does not do all that lies in his power to promote social solidarity.

Citizenship is not mere patriotism. It is much wider and deeper than patriotism. Rightly or wrongly, patriotism is associated in the popular imagination with some form or

another of noble, exalted, and exceptional service rendered to one's country at an hour of great need. It often means preparedness to lay down one's life for the good of the country, and has at times even been construed to mean lying and prevaricating on behalf of one's country when its safety or honour is at stake. In the history of the world there have been not a few great patriots who rendered some striking and conspicuous service to their country at exceptional times, but who were poor citizens in their every-day life and contacts. The world has learnt the bitter truth that patriotism, to use the oft-quoted words of Nurse Cavell, "is not enough." Citizenship calls for a steady, continuous, devoted, intelligent, and often unnoticed and unrecognized service, in both small things and big, to one's neighbourhood, one's country, and eventually to humanity itself. Not infrequently patriotism, in its actual working, has been a divisive force. Citizenship, on the other hand, is a unifying factor. It knits together man and man and nation and nation in an all-embracing unity. Citizenship, rather than patriotism, should be the goal of our endeavour.

Citizenship is in the nature of a series of ever widening concentric circles. It begins with the home or family, but soon spreads into the neighbourhood, the village, the town or city, one's industry or occupation, the country, and the world at large. The good citizen should recognise his loyalty to every one of these groups. Citizenship which stops short of loyalty to one or few of these groups is partial and incomplete. True citizenship is a right ordering of loyalties. A good citizen ought to be a good father, husband or brother, a congenial and useful neighbour, a loyal and intelligent patriot, a faithful worker, a lover of the poor and down-trodden, and an ardent champion of international peace and good-will. Citizenship is not a mere sentiment or the repetition of platitudes. It is a steady and devoted service in every aspect of man's life.

Training for citizenship is a paramount duty of the family, the school, the college, and the church. A proper study of citizenship requires:—

- (1) An appreciation of the worth and dignity of every human being;
- (2) An understanding of the right relation of the individual to society and of the necessity of social solidarity;
- (3) An apprehension of the place of the State in the life of the individual and of society;
- (4) A recognition of the correlation of rights and obligations; and
- (5) An appreciation of the proper training of habits, dispositions, and attitudes for the successful working of citizenship.

1. *The Worth of the Individual*—A valuable lesson which the world is gradually learning is that no community can be said to make true progress unless it recognises the value of human personality. Artificial distinctions of caste, class, and creed, race, rank, and religion are inimical to the development of a spirit of true citizenship. Good citizenship demands a much larger degree of social and economic equality than what obtains to-day. If human civilisation is to rest on a sure foundation, every individual should be given the fullest and freest opportunity possible for the development of his capacities. Talent should not perish for the want of encouragement. Human institutions have a value only to the extent to which they are conducive to the development of personality. Failure to recognise this simple truth has meant the slow death of many an ancient civilisation.

Although slavery is a thing of the past over a great part of the world, it is only dimly that we are perceiving the value of every human being, not only in the sight of God, but also in our own estimation. That gifts and capacities vary and that some are more richly endowed by nature than others

are incontrovertible facts which it would be foolish to deny. To admit this difference, however, is not to justify the exploitation or oppression of one person by another or one class by another. In a country like ours where the shackles of caste and communalism still remain unbroken, where equality of opportunity and equality of consideration are still largely existent only in the realm of ideals, and where we are still a long way from realising the principle of "open career to talent," we need to assert and re-assert the sacredness of every human personality.

2. *Social Solidarity*—A second lesson in citizenship which every individual should learn, at a very early age, is the urgency of social solidarity. No society can long endure if individuals and groups of individuals fight for their own narrow interests. Fortunately, in many cases, individual good and social good do not clash with each other. But when they do the loyal citizen should have no hesitation in choosing the larger good in preference to the smaller. The individual has a life to live and an end to realise; but so has society. Therefore, true citizenship means the harmonious adjustment of the legitimate claims of the individual and of society. Plato sought this adjustment in his well-known doctrine of justice, including as it does a three-fold classification of society according to functions and a communistic way of life for the first two classes. The ancient Hindus sought it in the ideal of 'Dharma', which required every individual to maintain the social order by performing the duties of the class to which he belonged and which exhorted him to develop his personality through the four stages of life. In the Middle Ages the reconciliation was sought through a universal church-state, but this attempt ended in failure. In recent times the Platonic ideal has been revived by the idealists, who state the law of adjustment between the individual and society in the phrase "My station and its duties." Whatever the merit or demerit of these theories may be, there is no

question that social existence is the very life and breath of every good citizen.

3. *The Meaning of the State*—We cannot proceed very far in understanding the rights and duties of citizenship if we do not have a clear grasp of the true meaning of the State. Rightly understood, the State is man's best friend. It is not the enemy of man as the anarchists contend it to be. It is not even a mere disinterested onlooker. It is we ourselves in a different capacity. The weal of the State is our weal and the woe of the State is our woe. A State cannot be much better or much worse than the average citizens who compose it. Therefore, what kind of a State we shall have depends largely upon ourselves, our wishes and desires, our determinations and our efforts. The State does not have an end of its own, apart from or contrary to, the end of individual members. On the other hand, its function is to promote "the highest moral well-being of its citizens." One of the first lessons to learn in citizenship is that the policeman in the street corner directing traffic, the judge who pronounces his verdict upon cases from day to day, the income-tax officer who sends us a notice to remind us of our dues to the State, nay, even the sweeper who keeps our streets clean, these and others like them are our true friends. Obedience to the State thus becomes, "obedience to the citizen's own better self."

In assigning such a high place to the State, it should not be taken to mean that we endorse the totalitarian view of the State envisaged by Hegel and put into actual practice in present-day Italy and Germany. The totalitarian State reduces the individual to a position of absolute impotence and thus flatly contradicts the ideal of the worth of the individual which we conceive to be the foundation of true citizenship.

(4) *Correlation of Rights and Obligations*—Our understanding of citizenship will be altogether inadequate if we do not lay hold of the truth that every right has a corresponding obligation. Too often emphasis is placed upon rights to

the exclusion of duties. It is easily forgotten that rights and duties are correlatives. Rights and duties are in fact "the same thing looked at from different points of view." If, for instance, I have the right to vote, surely it is my duty to exercise that right, and exercise it intelligently and conscientiously. Similarly, if primary education is the right of every child, surely it is the duty of every earning member of society to assist the State in providing this right. A right is by no means a selfish claim. It is a disinterested desire on the part of members of society to realise a common social good. Correctly understood, rights are the outer conditions essential to man's inner development. Rights being unselfish in their nature, one can fight for the rights of others, even for those of an enemy. In this connection it is well to remember that the ancient Hindu law of 'Dharma' lays more emphasis upon duties than upon rights. In the significant words of Principal L. P. Jacks, we have "a right to duty."

(5) *Training in Character*—Training in citizenship is nothing less than training in character ; training in healthy habits, dispositions, and attitudes. When such is the case it is regrettable that in the name of religious toleration there is an increasing antipathy to the teaching of religion and morals in the State-aided educational institutions. While it is necessary that indoctrination of pupils in religious dogmas should be prohibited, to throw moral instruction overboard along with religious indoctrination is fraught with much danger. It would be disastrous to good citizenship to bring up generations of children who have had no instruction in elementary morals, children who do not understand and appreciate the value of honesty, truthfulness, justice dependability, mutual goodwill and public-spiritedness. No religion can object to the inculcation of these simple virtues. Citizenship, we contend, means character, and without character no democracy can long endure.

## II The Rights of Citizenship.

*The terms 'citizen', 'subject', 'alien'*—In a self governing democratic country the terms 'citizen' and 'subject' are co-extensive. In the capacity of a citizen, the individual has a share in the sovereign authority of his country, and as a subject he obeys the laws which he himself makes. In a country which is autocratically governed or is under foreign domination the two terms do not coincide. Aliens fall under a different category altogether. They cannot enjoy the rights of citizenship until they are naturalised. Different States prescribe different conditions for the acquisition of citizenship. The general conditions are the renunciation of citizenship in a foreign country, residence for a period of years in the new country, allegiance to the constitution, and literacy. Citizenship may also be acquired by marriage and by appointment to government posts. Although aliens generally are not entitled to political rights, they are obliged to pay rates and taxes. The native born who are entitled to citizenship and the privilege of vote should apply for the enrolment of their names in the register maintained for this purpose.

*Rights of Citizens in Ancient Greece and Rome*—In ancient times the right of citizenship was very much restricted. In the Greek cities large sections of people were excluded from citizenship; in the majority of them women played a very small part. Political and civil rights were coincident, so that those outside the narrow circle of the citizens did not enjoy even civil rights. Aristotle considered that active participation in the public life of the city was essential to citizenship. A citizen he defines as one "who has a right to share in the judicial and executive part of government in any city...A city is a collective body of such persons, sufficient in themselves to all the purposes of life." The minimum functions which Aristotle requires of a citizen are that he should act as a juryman and be a member of the assembly.

Mechanics are excluded from citizenship. Slavery was "the foundation of the economy of the ancient city community"\*\* It was the very condition of the 'good life'.

Citizenship in Rome was of a different kind. As MacIver points out, Rome achieved a political unity based upon metropolitan citizenship. It was quite possible for a person to be a Roman citizen without ever having seen the city. "From early times the Romans had the wit to distinguish between civil rights—rights of equality before the law and political right—rights of membership in the sovereign body."†

Citizenship to-day is viewed not in relation to any metropolitan city as in Roman times, but in relation to the nation State. The citizenship of the future may very well be a world citizenship. As yet there is no such thing as Imperial citizenship in the British empire.

*Classification of Rights*—It is usual to distinguish between the civil and political rights of the citizen, although the line between the two is not always easy to draw. In general, civil rights include equality before the law, freedom of the person, security of property, and freedom of conscience. Political rights are those which enable a man to take an active part in the government of his country. The best illustration of the latter type of rights is the right to vote. Another way of classifying rights is to divide them into legal and moral rights. This classification serves to bring out the fact that not all the rights that ought to be on the statute books of any country in the interest of the "good life" of its citizens are really there. Thus, the right to the minimum conditions of civilised existence is a right which everybody ought to possess. But nowhere in the world is this right actually put into practice to any large extent. Conversely, not all legal rights are morally justifiable.

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\* R. M. MacIver : *The Modern State*, p. 93.

† *Op. cit.*, p. 97.

*Fundamental Rights*—Some of the modern constitutions embody fundamental rights in them which guarantee fairness of treatment to all citizens and the minimum conditions necessary for the free existence of all. They are declared to be inviolable by the government. The fundamental rights guaranteed by the German constitution are summed up by Mr. V. S. Sastri\* as follows :—

1. Liberty of the person.
2. Liberty of movement and settlement (within the State).
3. Liberty of migration and the right to the protection of the State.
4. The inviolability of one's house.
5. The right of property.
6. Freedom of belief and conscience.
7. Sanctity of private correspondence through the post, telegraph or telephone.
8. Freedom of expression of opinion.
9. Equal eligibility for office.
10. Equality before the law.
11. Freedom of public meeting.
12. Freedom of association.
13. Freedom of contract.
14. Freedom of trade and industry.
15. Freedom of marriage.
16. The franchise.
17. Education till the eighteenth year.
18. Work.

Similar rights are incorporated in the constitution of the Irish Free State, too.

British thinkers as a rule do not favour the inclusion of fundamental rights in a political constitution. A. V. Dicey, whose authority on constitutional questions is undisputed,

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\* The Rights and Duties of the Indian Citizen, pp. 19-20.

claims that a formal statement of rights in a constitution is quite unnecessary and that all that is needed is provision in the ordinary law of the land for suitable remedies to which the citizen may resort whenever any of his rights is violated or infringed. Prof. Laski takes a different point of view when he writes, "Bills of rights are, quite undoubtedly, a check upon a possible excess on the government of the day. They warn us that certain popular powers have had to be fought for, and may have to be fought for again...It (a Bill of rights) acts as a rallying-point in the State for all who care deeply for the ideals of freedom ..A Bill of rights, so to say, canonizes the safeguards of freedom; and, thereby, it persuades men to worship at the altar who might not otherwise note its existence."\* Indian politicians generally favour the incorporation of fundamental rights, for they believe that, among other things, such incorporation will guarantee to the minorities the exercise of their legitimate rights and give them a sense of security and allay communal fears, as well as serve as an effective check upon the arbitrariness of government.

† The principal *civil rights* recognised by most states are the right to life, the right to personal security, the right to free movement and free settlement, the right to religious liberty, the right to free speech, the right to free association, the right to legal equality and justice, the right to property, and the right to work. None of these rights is an absolute right. Restrictions placed on them vary from country to country.

*The right to free life* is the most fundamental right of every citizen and is the foundation of all other rights. It is restricted by the right of the State to punish offenders and

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\* *Liberty in the Modern State*, pp. 52-53.

† For parts of the material in this section, I am indebted to an unpublished work of Prof. S. N. Varma on *The Civic Rights and Duties of the Indian Citizen*.

its right to compulsory conscription in times of war. Personal security is guaranteed to all to-day in England. It means that no person can be subjected to imprisonment, arrest, or other physical coercion which does not admit of legal justification. In the words of A. V. Dicey, "That anybody should suffer physical coercion is in England *prima facie* illegal, and can be justified on two grounds only, i. e. either because the prisoner or person suffering restraint is accused of some offence and must be brought before the courts to stand his trial, or because he has been duly convicted of some offence and must suffer punishment for it." One of the important guarantees for this right of personal security is the writ of *habeas corpus*, which is an order for the 'production of one's body' in open court. This writ enables a man who is unlawfully imprisoned to regain his freedom. The right to personal security is not fully guaranteed in India. According to Section 111 of the Government of India Act, a person can be arrested and detained without apparent cause on the strength of a written order from the Governor-General-in-Council. The Criminal Procedure Code permits the arrest of certain classes of persons without arrest. The *habeas corpus* in India does not apply to "persons detained under the Bengal State Prisoners' Regulation III of 1818, Madras Regulation II of 1819, or Bombay Regulation XXV of 1827, or the State Prisoners' Act of 1850, or the State Prisoners' Act of 1858."

*The Rule of Law*—The Rule of Law guarantees liberty to the citizen in his relation to government in all English-speaking countries. It stands for (1) the absolute supremacy of the law; (2) the application of the same law by the same courts of law to both government officials and private individuals; and (3) the derivation of such rights as the right of free speech, of public meeting, and of the liberty of the press from ordinary private law relating to private individuals. Under the rule of law there is no place for arbitrary

government. It is opposed to prerogative or the discretionary authority of government. It requires that government officials should keep within the ordinary law just as much as any other person. All persons in the State are subject to ordinary civil courts. Special courts like Courts-martial have their limits fixed by the ordinary civil courts.

The Rule of Law does not obtain in France. This does not mean that a rule of lawlessness prevails there. Government officials are subject to Administrative Law and Administrative Courts for offences committed in the performance of their official duties. The French belief is that it is illogical to bring the acts of public officials under ordinary law and that discretionary authority given to officials is not the same as arbitrary government. The English system leads to a curious result in its actual working. A soldier, e.g., who is called upon to fire on a riotous mob has to obey the order given to him on pain of military discipline. But if, later on, it is proved that the firing was uncalled for and unjustifiable, the soldier—and not merely the commanding officer—may be prosecuted under the ordinary civil law for murder. Thus the military character of the soldier is superimposed on his civil character, and he comes under two conflicting orders. In cases of this kind—rioting—the ordinary judge and jury are, perhaps, not the best fitted to arrive at a correct decision. A case can certainly be made out for the trial of the soldier or his superior officer in a special court where the political and military points of view can be represented. The defect with the English system is that it ignores the public aspect of the officer's calling. It overlooks the fact that the soldier's duty to defend public peace is different from the private citizen's duty to defend himself.

In saying all this, it is not our intention to favour one system as against the other. Our only contention is that both systems have their obvious advantages, and that the success of their work depends upon the legal and political

traditions prevalent in the countries where they prevail. In India the tradition which has been followed is that of the Rule of Law, but in recent years there have been striking departures from it. Section 110 of the Government of India Act lays down:

“(1) The Governor-General, each Governor, Lieutenant-Governor and Chief Commissioner, and each of the members of the Executive Council of the Governor-General or of a Governor or Lieutenant Governor and a minister appointed under the Act, shall not (a) be subject to the original jurisdiction of any High Court by reason of any thing counselled, ordered or done by any of them in his public capacity only; nor (b) be liable to be arrested or imprisoned in any suit or proceeding in any High Court, acting in the exercise of its original jurisdiction; nor (c) be subject to the original criminal jurisdiction of any High Court in respect of any offence not being treason or felony.”

“(2) The exemption under this section from liability to arrest or imprisonment shall extend also to the chief justices and other judges of the several High Courts.”

*Trial by jury*—Another means by which personal liberty is secured in England and many other countries is trial by jury. In England trial by jury is obligatory in all serious criminal cases. In civil cases in which the moral character of a person is brought into serious dispute, the aggrieved party has the right to demand jury trial. In India there is no trial by jury in civil cases. Even in criminal cases, it has not made much headway.

*The right of private defence* is recognised in all civilised countries. Sections 96-106 of the Indian Penal Code lay down:—

"Nothing is an offence which is done in private defence. Every person has a right to defend:

- (1) His own body and the body of any other person against any offence affecting the human body.
- (2) The property, whether movable or immovable of himself or any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass."

But "there is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by Law. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt if done or attempted to be done by the direction of a servant acting in good faith under colour of his office, though the direction may not be strictly justifiable by law. Then, again, there is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities."

"When an act which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity, of understanding, the unsoundness of mind, or the intoxication of the person, every person has the same right of private defence against that act which he would have if the act were that offence."

"The right of private defence in no case extends to the infliction of more harm than it is necessary to inflict for the purpose of defence."

Law also provides protection from personal violence and guarantees the inviolability of a person's dwelling place. The English belief is "an Englishman's home is his castle." The German constitution reads: "The residence of every German is an inviolable sanctuary for him; exceptions are admissible

only in virtue of the law." The inviolability of the dwelling place is guaranteed in India, although Section 47 of the Code of Criminal Procedure gives the police the right to infringe this right under specified conditions.

*The right to free movement and free settlement*—In normal times the citizen is allowed to move about as he pleases in his own country and settle down where he chooses. This privilege does not extend to criminals or to those whom the government suspects of having a criminal, revolutionary or seditious intention. The right to settle down in a foreign country is very much restricted. The United States of America has a quota system for each of the principal nationalities. This system practically shuts out Asiatics from settling down on the American soil. There being no such thing as imperial citizenship in the British Empire, the Indian has no automatic right to migrate to any part of the Empire to which he chooses to go. Even if he manages to get to some other part of the Empire, he can only enjoy such rights and privileges as the country in question chooses to give him. The British dominions have special laws against the free settlement of Asiatics, including Indian subjects of the Empire. In travelling from one country to another, the citizen is required to have a passport duly endorsed by the appropriate officer representing the country to be visited. Passport regulations are sometimes used to restrict the activities of political agitators and others considered to be undesirable by the government. If they are out of the country, permission is refused to let them come back to the country; and if they are inside the country, permission is refused to let them go out.

*Religious liberty*—Most modern States grant this liberty to their citizens. This means that a person can profess any religion he pleases (or no religion at all), and adopt any form of religious worship so long as it does not threaten the safety of the State or lead to gross immorality or indecency.

or a breach of the peace. Some countries place restrictions on Mormonism and polygamy, although certain types of religious belief may tolerate and even expressly require, a plurality of wives. Religious propaganda is allowed by many States so long as it is done in an orderly way and no undue pressure is placed on any one to change his faith. Conversion from one faith to another sometimes entails the loss or curtailment of certain legal rights. Marriage between people of different faiths raises many difficult questions, and different countries have different ways of solving them. Freedom of conscience, being a vital part of religious liberty, is generally allowed by the modern State. But conscientious objection to taking part in war is not always conceded.

*The right to free speech and free press*—While free speech and free press are reckoned to be priceless liberties by all, restrictions are often imposed upon them for political and religious reasons specially at times of war and internal disorder. The right to free speech and free press does not mean the right to teach or publish sedition.

Section 124 A of the Indian Penal Code reads: "Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites, or attempts to excite disaffection towards Her Majesty or the Government as established by law in British India, shall be punished with transportation for life, or any shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with no fine."

The law of sedition is exercised much more stringently in India than in England; and the executive enjoys extraordinary powers. If the right to free speech or free press does not include sedition, neither does it include blasphemy, libel and slander. The object of the law of libel is to prevent a person suffering public loss or damage. As Worts observes, the law of libel does not restrict the privileges of

citizenship; but in the public interest of peace, it punishes a wrongful use of them.

*The right to public meeting*—The English law derives the right to public meeting from the private rights of the individuals to meet when they like and say what they like. This right does not extend to meetings and associations for illegal purposes. Meetings which obstruct a public highway come under the law of common nuisance and meetings held on private property without the consent of the occupant come under the law of trespass. Section 141 of the Indian Penal Code describes an assembly of five or more persons as “unlawful assembly.”

“If the common object of the persons composing that assembly is firstly, to overcome by criminal force, or show of criminal force, the legislative or the executive government of India, or the Government of any Presidency or any Lieutenant-Governor, or any public servant, or, secondly, to resist the execution of any law, or of any legal process; or, thirdly, to commit any mischief or criminal trespass or other offence; or fourthly by means of criminal force to any person to take or obtain possession of any property or to deprive the use of water, or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or, fifthly, by means of criminal force, or show of criminal force, to compel any person, to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.”

Sections 127-132 of the Code of Criminal Procedure lay down restrictions on the holding of public meetings. As Mr. V. S. Sastri points out, (1) “there is no provision of a binding character which insists on the public or the magistrate giving warning;”\* (2) “good faith is considered to be a sufficient justification for even excessive action on the part

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\* V. S. Sastri : op. cit., p. 69.

of the executive;"\* (3) "there is a provision which exempts from all liability the soldier shooting under orders on such occasions or any other inferior officer doing something under orders;"† (4) "people aggrieved by the action of the executive in suppressing a riotous assembly" are required "to obtain the sanction of the Governor-General before prosecuting the officer concerned."‡ The Seditious Meetings Act X of 1911 places further restrictions on the right of public meeting; the District Magistrate may prohibit any meeting which in his opinion is likely to disturb the peace, and this discretion of his cannot be questioned before any court of law.

*The right to free association*—This right is closely related to the right of public meeting, although it differs from it in some respects. While a public meeting is not permanent in character, an association possesses this quality. It has its own rights and duties. The members who compose it stand on an entirely different footing from those who come together casually to a meeting. The principal objects which political associations serve are the ventilation of grievances and the propagation of principles and policies. In the interest of political progress it is desirable that undue restrictions should not be placed on the rights of associations.

As far as India is concerned, this right is limited by Part II of the Criminal law Amendment Act of 1908, which gives the Governor-General-in-Council the power to declare any association unlawful if in his opinion it "is engaged in the work of interfering with the administration of justice or otherwise disturbing the peace."§ There is no appeal from such a decision to a court of justice.

*The right to equality and justice*—No one seriously believes that all men are alike and yet most people believe

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\* V. S. Sastri : op. cit., p. 70.

† Ibid.

‡ Op. cit., 71.

§ V. S. Sastri : op. cit., p. 72.

in some form or another of equality as being essential to good citizenship. Equality does not mean identity of treatment. It means that, other things being equal, each man's good should be treated as of the same intrinsic value as the good of anybody else. The persistent claim to equality is an emphatic protest against false distinctions and senseless discriminations.

The chief forms of equality that the State should secure are legal, political, and social. It goes without saying that no civilised State can afford to have different laws for different people. (The special case of public officers has been disposed of earlier.) All are equal "in the eyes of the law." The law knows no favourites. Yet it is sometimes said that "there is one law for the rich and another for the poor." In some parts of the world there is one law for the dominant race and another for the subject race. Against discriminations such as these the French Declaration of 1789 asserts "the law should be the same for all both in protecting and punishing. All citizens being equal in the eye of law, are equally admissible to all dignities and public places and employments, according to their virtue and their talents."

*Political equality* stands in a class by itself. It belongs to the realm of political rights as against civil rights. It includes such rights as the right to vote and eligibility to office. Some writers include under it the freedom of association and the freedom of speech and writing. We need not enter into an examination of that point of view here. As far as the vote is concerned, it must be kept in mind that it is a sacred responsibility and that not every one is capable of using it in the best manner possible. Yet there seems to be no better and more convenient way of arriving at public opinion than by universal suffrage. The general rule which prevails in all democratic countries is "one man, one vote." A few exceptions are allowed, as in the case of University graduates of a certain number of years standing.

Special constituencies are undemocratic, as also high property qualifications. In all progressive countries men and women are treated alike in the enjoyment of suffrage. As a general rule, after they attain 21 years of age they are entitled to the privilege of the Vote. Aliens, insane people, minors, and those convicted of serious offences are almost always excluded.

In India suffrage is very much limited by property and other qualifications. Men and women do not receive identical treatment. Separate electorates are provided for Muslims, Sikhs, domiciled Europeans and Anglo-Indians, and Indian Christians (in one province). Special constituencies are provided for landlords, commercial groups, and labour. It is to be hoped that as India progresses on the democratic road, separate electorates and special constituencies will be left behind as things of the past. This, however, seems to be a hope against hope inasmuch as the impending constitution promises to extend and deepen the existing differences between communities, classes, and races.

*Eligibility to public office* is another important right of the citizen. Section 96 of the Government of India Act, 1919 lays down that "No native of British India or any subject of His Majesty resident therein shall by reason only of his religion, place of birth, descent, colour or any of them be disabled from holding any office under the Crown of India." How far this is carried out in practice is known to everybody. Recently communalism has been introduced into the public services by assigning a quota to the various communities of India in their scramble for the loaves and fishes of office.

*Social equality*—The right to social equality is one which cannot be easily provided by the State. Successful assertion of this right depends to a large extent on the social habits and traditions of the people. All that the State can do is to remove social disabilities, more by indirect than by direct

means. By throwing open public schools, public buildings, public roads, and public wells to all and sundry, the State can do a great deal to bring about social equality and justice. The throwing open of places of worship to all the members of a particular religious faith is perhaps a matter on which the State cannot directly legislate, although a sound principle to follow in this and similar cases would be that those who pay the piper should call for the tune. Public opinion, rather than direct State action, should redress many of the grievances which come under the head of "social discrimination." But in a country where public opinion is at a low ebb, the State may have to take the initiative.

The rights of women form an important part of 'social equality'. The essential equality of the sexes is only gradually coming to be realised. In all such important matters as the right to vote, the right to hold and dispose of property, the right to health and education, the right to a fair wage, and the right to marry a person of one's own choice, it is eminently desirable that women should be treated as the equals of men. Difference in sex alone is not a sufficient ground for legal, political, or social discriminations. India is still a backward country in the recognition of the equal rights of women.

*The right to economic and social justice* is a right which is coming to be recognised more and more in the modern world. Slum clearance, securing the welfare of the working classes, provision of a minimum wage, care of the defectives and dependents—all these are considered to be the legitimate duties of every progressive State. The modern State provides some or all of the following: institutions for the housing, feeding, and educating of the poor, asylums for lunatics, lepers, and the like, famine and flood relief, factory legislation, Trade Union acts, old age pensions, mothers' pensions, workmen's insurance, and unemployment relief. The present-day tendency in all advanced countries is to

secure for the citizen a group of rights which may be called 'welfare rights'. These rights include, says a contemporary,

- (1) A right to work and relief in case of unemployment, and to insurance in case of old age, sickness, and infirmity;
- (2) A right to a minimum standard of living, a living wage, reasonable hours of work, good sanitary surroundings and dwellings, and care of motherhood and children;
- (3) A right to elementary education;
- (4) A right to good housing conditions; and,
- (5) A right to share in the prosperity of the country.

*The right to property*—The right to private property is the cornerstone of the present-day capitalistic society. Its justification lies in the fact that control over the material means is necessary for the highest well-being of man. This does not mean, however, an unlimited right to property. Man has the right to property only to the extent to which it is conducive to common welfare. No one has a right against society. The modern State recognises property in land, rent, interest, profit, wages, bequest, inheritance, patents, copyrights, and reputation. The restrictions placed on property take the form of taxes of various kinds and legislation regarding minimum wage, high rate of interest, conditions of land ownership, protection of tenants' rights, and monopoly.

*The right to work*—This is a right which is gradually coming to be recognised. It is reasonable to argue that if the individual has the right to free life, he should have the right to support himself in decency. Several objections may be raised against the State providing work for its citizens. Such a practice will probably encourage idleness, increase taxes, waste national wealth, act as a check upon skill and industry, and demoralise the labourers in many other ways. In spite of these objections, we believe that a hungry man who is able and willing to work should be provided work.

With the gaining of experience the State ought to be able to remove some of the objections which loom large at present. Hobhouse is right when he says that the right to work "is an integral condition of a good social order. A society in which a single honest man of normal capacity is definitely unable to find means of maintaining himself by useful work is to that extent suffering from malorganisation."\* It ought not to be difficult for any efficient government to separate the honest worker from the idler among the unemployed and provide work for the former and send the latter to places of correction. It is the business of the State to provide ample opportunities for the acquisition of skill and teach the people to cultivate the moral virtues of temperance, thrift, and prudence.

*The right to public health and education*—Health and education are indispensable to the highest well-being of every man, and progressive States to-day spend vast sums of money on them. Every government worthy of respect pays careful attention to the problems of sanitation and public health; and, in particular, to the prevention of epidemics, to clean water supply, to healthy housing and living conditions, and to the sale of clean and wholesome food. In India while the public health in cities and big towns is fairly well looked after conditions in the villages are deplorable. Ignorance, dirt, and debt are the three great enemies of the Indian villagers. In a country like England where there is a vigorous ministry of health, in addition to the usual ways of caring for public health, the government attends to town-planning, creation of garden cities, sanitary house-building, means of transit, holiday provisions, and sport; and lays down laws regarding national insurance, minimum wage, maximum hours of work, etc.

Free education, at least in the earlier stages, is universal

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\* L. T. Hobhouse: *Liberalism*, p. 159.

in all the leading countries of the world to-day. Education is almost as indispensable as air, food, and water. The remark of Diogenes that "the foundation of every State is the education of its youth" is even more true to-day than it was in his own time. England spends more than 30 million pounds a year on the educational service. The U. S. A. has a free public school system. The percentage of literacy in America, England, Germany, France, and Japan is very high. In India it is only 7 per cent. It is obvious that the overwhelmingly large percentage of illiteracy in our country is a very great stumbling-block to good citizenship and to the progress of democracy. Legislation has been passed in recent years introducing an element of compulsion in primary education, but it has not yet made much headway in solving the problem of illiteracy. India needs not only the removal of illiteracy but also education for citizenship. This means, among other things, technical and vocational education, emphasis on the vernacular and Indian culture, and education related to the life situations of the pupil. As Taylor and Brown observe: "Men must be taught to act intelligently, politically, and socially as well as learn the three R's. The school must educate for citizenship as well as for the occupations and professions."\* The contents of the school curriculum should educate for life and for living."†

### III. The Duties of Citizenship.

It is unfortunate that many people seem to think of citizenship only in terms of rights. They rarely emphasise the duties which citizenship involves. It stands to reason that if the individual can claim rights from the State, so can the State from the individual; for every right implies a corresponding obligation. From our childhood up we are taught the necessity of performing our duties. At home and

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\* C. C. Taylor and B. F. Brown: *Human Relations*, p. 27.

† *Op. cit.*, p. 30.

school children are taught the duty of obedience. At work we readily accept the idea that it is our duty to do our work as faithfully and as well as we can. It is admitted in every society that a man should provide for his wife and children. If he is a member of a social or recreational club, it is taken for granted that he will obey rules. Yet, when we come to membership in the State, there is a tendency on the part of general to think almost exclusively in terms of rights and forget the corresponding duties. This tendency is probably due to the mistaken idea that the State and its government are engines of oppression and that, therefore, we should not render to them any more obedience than what is strictly required on pain of punishment. If, as we believe, the State and government are not something apart from the citizens of the community, but exist in order to promote their highest good, the duties of citizenship will be as readily recognised as the rights.

Even after granting that the citizen has duties to the State, there is considerable difference of opinion as to what form these duties should take. In general, we may classify duties into legal and moral duties, although there are some duties which are both legal and moral. It is obvious that violation of legal duties is liable to be punished by law, while violation of moral duties cannot be so punished.

*Legal Duties*—Among the fundamental legal duties may be mentioned:

- (1) Respect for law.
- (2) Help to maintain order.
- (3) Service on the jury.
- (4) National defence.
- (5) Payment of taxes, rates, and cesses.
- (6) Exercise of the vote (both legal and moral).
- (7) Education of children.
- (8) Maintenance of public health and sanitation.

(1) *Respect for law*—This is the first duty of every

citizen. Without orderliness and a spirit of law-abidingness no country can advance very far. Respect for law should be inculcated at home and school, for that is the very foundation of true citizenship. As a general rule, even bad laws should be obeyed till they are repealed by constitutional methods. This does not mean that, in very exceptional cases, there is not the 'duty' of resistance.

Laws to-day are a legion in number, and it is not easy for the ordinary citizen to be conversant with all of them. Yet no State allows ignorance of law as an excuse for its violation. In some cases, however, punishment for offences committed in ignorance may be comparatively slight. But, as a general rule, every citizen is supposed to acquaint himself with the laws which govern him. Citizens' leagues and organisations of other kinds exist in many countries for meeting this need.

Law is not a harsh tyrant. To the extent to which it is moulded by the general will of the people, it ceases to be an extraneous authority imposing itself upon the citizen and succeeds in becoming his own will purged and purified of all selfishness. As a recent writer puts it, "law is really a mass of rules and customs which all the worthy members of a State agree upon as necessary to safeguard their common welfare and liberties against those who would attack or deny them." Government exists in order to enforce these rules and customs. Hobbes pictures a state of lawlessness in these forcible words: "In such a condition, there is no place for industry ..... and consequently no culture of the earth ..... no knowledge ..... no arts; no letters; no society; and which is worst of all, continual fear and danger of violent death. And the life of man, solitary, poor, nasty, brutish and short."\*

In India not all laws express the common assent of the

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\* Leviathan: ch. XIII.

people. Some of them are the decrees of the supreme executive authority, and the extent to which they do not express the active consent of the people, they put a strain upon their loyalty.

(2) *Maintenance of order*—The good citizen should not only keep the laws himself; but help the government in the enforcement of laws. The extent to which this duty is enforced varies from time to time and place to place. As a general rule, the machinery of the State is adequate to cope with law-breakers. But when the spirit of lawlessness becomes serious, chronic or wide-spread the State calls upon all citizens to come to its aid. In this respect, then, every citizen is a public servant and a guardian of the laws of his country. Section 17 of the Police Act in India demands special duty of the citizens in emergency. "In any disturbed area, if it appears to the magistrate that the regular police is not sufficient for the maintenance of order, he might require some citizens to enrol themselves as special Police Officers and then they come under the discipline of the regular police force."\*

(3) *Service on the jury and other public bodies*—Serving on the jury and acting as assessors are honoray duties imposed on citizens and are well-recognised in India. Section 267 of the Code of the Criminal Procedure lays down: "The jurors shall be chosen by lot from the persons summoned to act as such in such a manner as the High Court may from time to time by rule direct." Section 284 of the same Code provides for the summon of assessors. Section 332 provides that "Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as a juror or as an assessor who, without lawful, excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, after

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\*V. S. Sastri : Op. cit., p. 91.

being ordered to attend, shall be liable by order of the Court of Sessions to a fine not exceeding Rs. 100".

(4) *Military duty*—Defence of one's country at the hour of great need is supposed to be the supreme duty of every citizen. There are some to whom patriotism is practically synonymous with military duty. This, of course, is a faulty view. So long as patriotism is made to synchronise with militarism, so long will the cause of international peace and good-will suffer.

Theoretically, every citizen of military age, generally between 18 and 45 years of age, is supposed to take up arms when the time comes for action, although this is not universally insisted upon. As a rule, this duty is considered to be more a matter of honour than of law. Conscription is resorted to when governments become desperate, and sufficient numbers of people do not enlist voluntarily. Some countries offer inducements for the growth of population in order to increase or maintain their military strength. Compulsory military training is provided by some States. In normal lines the modern State relies on the professional armies for all ordinary emergencies.

(5) *Payment of taxes, rates and cesses*—It is obvious that the conduct of government means a large outlay of expenditure. For this purpose taxes are raised by the central government and rates by the local. In countries which are democratically governed, the citizen has considerable rights of determining what taxes shall be levied upon him. "Taxation without representation" is an obsolete principle in such countries. In India a considerable part of State expenditure is non-votable by the legislature. Even among the items which are votable by the legislature, any grant which is refused by the legislature may be restored by the Governor or the Governor-General, if he considers it necessary for the good government of the province or country as the case may be.

(6) *The exercise of vote*—The vote is not only a right, but also a sacred duty. Most States impose no penalties for failure to vote. In some States, however, if a citizen fails to vote for no good reason, he is liable to be fined. The ideal of citizenship requires that the vote should be regarded as a duty. The apathy of the voter is one of the weaknesses of democracy. The time may come when a person who continually fails to exercise his vote will be disfranchised and deprived of other rights of citizenship as well. Mr. V. S. Sastri is right when he says, "he who refuses or neglects to use his vote.....thereby proclaims to the world that he is not yet fit to become a member of a democratic polity."\*

(7) *Education of one's children*—In our modern society education is an urgent necessity. For the sake of earning a living as well as for the necessary adjustment of the person to the environment in which he lives, education is considered indispensable. Realising the importance of this fact, many States provide for free and compulsory education, and parents and guardians are required to send children to school on pain of punishment. The school-leaving age varies from country to country, although the present tendency is to prolong the period of education till the child is sixteen or eighteen years of age. In some of the part states of America, even university education is provided free of charge by the state universities.

(8) *Health and Sanitation*--The modern State pays much attention to the health of its people. It maintains a department or ministry of health to supervise the conditions which have a bearing on public health and undertakes positive measures for the improvement of the health of the people. Certain minimum requirements are laid down to ensure the safety of the people against epidemics and infectious diseases, as well as against insanitary conditions such

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\* Op cit., p. 93.

as filth, bad odour, shutting out of air and light, polluting of drinking water, etc.

*Maral Duties*—These are even more important than legal duties. They are duties discharged voluntarily by every right-minded citizen. It may be safely said that the country in which the sense of public duty or public spirit is weak or absent or where citizens perform duties simply because they are required of them by the law of the land is definitely on the decline path. True citizenship depends to a large extent on sound social and moral standards. It cannot very well be legislated into existence by the State.

The principal moral duties are—

- (1) Study of citizenship
- (2) Cultivation of public spirit
- (3) Proper exercise of the vote
- (4) Self-reliance
- (5) Education
- (6) Care of health
- (7) Thrift
- (8) Help of the weak
- (9) Resistance to the State, when absolutely necessary.

(1) *The study of citizenship*—Turgot remarks “the study of the duty of citizenship ought to be the foundation of all other studies.” This is indeed a wise saying worthy of acceptance. The good citizen should consider it his duty to make clear to himself the responsibilities which he owes to himself, to his family, to his neighbourhood, to his occupational group, to his village or city, to his country, and to the family of nations. Any one who fails to do his duty in all these spheres of life and conduct fails in his citizenship, for citizenship, as said already, is a series of ever-widening concentric circles. It begins with the individual, the family, and the neighbourhood, but in course of time engulfs the whole of mankind.

(2) *Cultivation of public spirit*—Public-spiritedness is

of utmost importance to good citizenship. Under this heading we may include such virtues as consideration for others, regard for public property, keeping one's surroundings tidy and clean, mutual helpfulness, co-operation, balanced judgment, readiness to stand up for the rights of others, and willingness to serve on public bodies even at some personal inconvenience. High intellectual qualities, military strength, and powers of organisation can accomplish little or nothing if they are not accompanied by intense public spirit.

As far as India is concerned, it is regrettable that there is not a high degree of public spirit. Individual and communal selfishness are rampant. In some big cities of India, it is practically impossible to get a wink of sleep at nights during the marriage season which lasts for three or four months in the year. Loud street music is played at all hours of the night from sunset to sunrise to the accompaniment of louder fire-works and fire crackers. Public conscience in India has not yet been sufficiently aroused to demand legislation which will put an end to such unnecessary nuisances. Mutilation of public property, or at least carelessness in the use of it, is not an uncommon phenomenon in our midst. Spitting in public places and in railway compartments, the dumping of household rubbish on public thoroughfares, and carelessness in the spread of infectious diseases are found to a considerable extent. While much attention is paid to personal hygiene, not enough attention is given to social hygiene. Mutual helpfulness and co-operation do not always go beyond the narrow walls of one's own group, caste or 'community.' A clear consciousness of the national community is still in the making. It is not yet widely recognised that sectionalism in thought, word, and deed is unworthy of a good citizen. Readiness to consider all the sides of a question and arrival at a balanced judgment are somewhat absent. There is a marked disinclination to interfere when the public is being openly wronged. One often sees third class railway

compartments packed like sardines, vehicles turning at the wrong corner in the street, buffaloes loaded to death, and the poor being trodden under foot. Yet those who would raise even a feeble voice of protest are few and far between. Men and women of intelligence, character, and progressive outlook do not always show a willingness to serve on public bodies or educate public opinion along right channels. Many of these defects, it needs hardly be said, are by no means peculiar to India.

(3) *Proper exercise of the vote*—As seen above, proper exercise of the vote is as much a moral responsibility as a legal duty. The good citizen should vote for the programme rather than for the man. He should refuse to become a slave to partyism. At all times he should exercise his judgment. Selfish considerations should play as little a part as possible. The good citizen should think of himself last and the good of the community first.

(4) *Self-reliance*—One of the elementary duties which every citizen should keep before himself is the duty of self-support and self-reliance. No one has the right to cultivate a pauper mentality. Every one should be able to lift his own weight. Boys and girls at home and school should be taught that idleness is anti-social and that all work is service. Practice of the dignity of labour should become almost a religious duty of every self-respecting citizen. All should work at something useful to the community, which at the same time gives them joy. Our educational system should be so modified as to make it possible for the teacher to discover and develop skill of some sort in every boy and girl—mechanical, industrial, artistic or literary.

(5) *Education*—If, as Diogenes says, “the foundation of every State is the education of its youth,” it is necessary for everybody to educate himself and his children. In sketching his ideal State in the Republic, Plato gives a very high place to education and holds that the strength of the State depends

upon its education. Without a well trained and well-cultivated mind, no one can adequately fill his proper place in society.

(6) *Care of Health*—Not only should the good citizen be an educated man. He should keep himself in health and strength, remembering that a healthy body means a healthy mind. He should cultivate clear and healthy habits and keep his surroundings absolutely tidy and clean. He should bear in mind the maxim, cleanliness is next to godliness. In the words of Descartes, health “is both the foundation of all other goods and the means of strengthening the spirit itself.”

(7) *Thrift*—Saving is not the same as hoarding. While there has been much hoarding in India, there has not been enough intelligent saving. Thrift is both a public and private duty. From the public point of view, it strengthens the economic position of the country. One never knows when wars, floods, and famines will visit any country. When such calamities arise, the State instantly requires large loans to protect the welfare of the people, and unless the citizen has saved that money, the State cannot have it. It is instructive to note that the most powerful countries of the world from the economic standpoint are those in which the habit of thrift is deep-rooted.

From the standpoint of the individual, too, thrift is an absolute civic duty. It is the best safeguard against sickness and old age. It is often believed that old age creeps on us gradually. But the fact is that it comes all too soon, and the man who has not put by for the rainy day finds himself stranded. If each citizen realised the value of thrift, there would not be the same amount of pauperism and destitution as at present; nor would the need for organised charity be so great. The State tries to inculcate the habit of thrift by such means as Insurance Acts and Old Age Pensions. Every citizen should respond to these worthy endeavours of the State, as far as it lies in his power.

(8) *Help of the poor*—Poverty is one of the greatest

curse of modern society. While some of it may be deserved, some of it is certainly undeserved. The present day capitalistic society is sick at heart to the extent to which it is unable to find remedies for chronic unemployment and undue poverty and fails to make the 'life creative' possible for every citizen. It is foolish to wait for national socialism or world-wide communism before we tackle our social and economic problems. While the State can, and should, do much to solve these, the responsibilities of the citizen should not be forgotten. Voluntary efforts by the individual and groups of individuals can go a long way in mitigating some of our present ills. As a recent writer puts it: "even when the nation as a whole was unripe for reform or violently opposed to it, a Shaftesbury was able to get laws abrogated which worked oppressively on women and children; a John Howard succeeded in effecting improvements in prison-life not only in his own country but in other lands as well; and a Wilberforce spent his life-time winning freedom for slaves, when even organised religion held slavery justifiable as an institution."\* The good citizen should have "a passion for improvement" and a keenness for social service. He should utilise to the full existing social agencies which aim at a better and more just world order.

(9) *Resistance to the State* (See pages 229-31).

#### IV. Hindrances to Good Citizenship.

Bryce speaks of indolence, private self-interest, and excessive party zeal as hindrances to good citizenship. Of these indolence is the most common. Sheer indifference prevents many a man from studying and reflecting upon public questions. It is often forgotten that the problems of government and State are the problems which concern every citizen. Very few voters in any country take the trouble to think before they vote. So often they vote according to the

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\* P. Appasamy: Legal Aspects of Social Reform, p. 232.

dictates of party leaders or in order to oblige their friends. There is another group of people who fail to reflect seriously on political questions owing to one or more of the following causes:—daily struggle for earning a livelihood, want of time and opportunity, imperfect education, and absence of contact with public life.

Self-interest is another great enemy of good citizenship. It is easy to get into the frame of mind which says that it is best to leave political questions to government officials and professional agitators. The excuse "Politics is a dirty game" is often given to hide one's own indifference and crass selfishness. If all good citizens in a democratic country refrain from taking an interest in civil and political questions, it is obvious that way will be paved for dictatorship, oligarchy or mob-rule. Apropos of this, Lahiri and Banerjea observe: "If the people are not willing and able to discharge their civic duties and guard their rights, a veiled dictatorship—oligarchy or bureaucratic government—will soon displace representative government."

Excessive party zeal is a third hindrance to good citizenship. If parties come to mean the rule of selfish cliques and the use of high-sounding phrases and programmes to countenance jobbery and corruption, it is time to abolish them, or at least seriously modify them. A recent writer states the matter thus: "A party is legitimate and useful when it is organised on a principle and embodies a doctrine. It is dangerous and illegitimate when it blindly follows a leader and concentrates its efforts to seize or to keep political power or some other more distinctly material benefit."

An evil altogether peculiar to India is that of communalism. People are trained to think not in terms of the entire national community, but of the particular religious groups to which they happen to belong. Smaller loyalties are encouraged and fostered at the expense, and even to the exclusion, of larger loyalties. For purposes of election the country is divided

into communal electorates. It is as if the State should tell the citizen: "You had better consider yourself for voting purposes as a member of such and such community and not a member of the whole collectivity, vote for your interest, vote for your people, do not think of the rest."\* The public life of the country is vitiated by communal feeling and narrowness.

Other hindrances to good citizenship in India are "the existence of social disabilities and caste divisions, hereditary claims to social and political authority, .....the prevailing illiteracy and want of education of the masses, together with a lack of any adequate idea of civic rights and duties."†

#### **V. Removal of Hindrances to Good Citizenship.**

Bryce suggests two ways of removing hindrances to good citizenship. They are 'mechanical' and 'ethical'. By 'mechanical' he means improvements in the structure of government. This includes changes in laws, institutions, and political methods. By 'ethical' he means improvement in the character and spirit of the people. Of these two methods the 'ethical' is undoubtedly more efficacious. Yet the 'mechanical' devices should not be ignored.

Under the 'mechanical' devices, an important place should be given to the promotion of literacy and training in local self-government. It stands to reason that an uneducated and ignorant mass is not the best material for good citizenship. Nor are people who have been used to autocracy in every walk of life, and have not learnt to govern themselves through neighbourhood organisations, municipalities, district boards and the like. Speaking to the East India Association in 1927 on Western influence in the East, Mr. Mallik of the India Council said that "the introduction of self-government

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\* V. S. Sastri: *Op.cit.*, p. 104.

† Lahiri and Banerjea: *An Introduction to the Principles of Civics*, pp. 128-29.

without giving the people the benefit of a free and effective primary education and an adequate training in real local self-government, is a mistake which is simply colossal." Lord Bryce writes in the same vein when he says, "The habit of self-government is the best training for democratic government in a nation. Practice is needed to vivify knowledge. "Universal education," say Taylor and Brown, "is a necessity in government of and by the people." \*

As far as India is concerned, the structure of the government should be so changed as to discourage communalism and provincialism and encourage nationalism. While law alone cannot accomplish this result, it is undoubtedly one of the important means to that end. A substantial degree of self-government is another way of strengthening citizenship. So long as a person has the feeling that the government which he is called upon to serve is an alien government and that what self-government he enjoys is largely a matter of form, he is not likely to cultivate the best civic virtues. Neither will civic enthusiasm rise to a great height as long as the social and political organisation of a country grinds the people down to poverty and ensures the safety and continued prosperity of vested interests. Social injustice, unmeaning equality, gross discrimination, and political favouritism are sure to sap the vitality of citizenship.

On the 'ethical' side, the first place should undoubtedly be given to proper home training. The home is the nursery of many virtues. It is there that the foundations of future character are laid. If in a good home the child learns such virtues as self-forgetfulness, consideration for others, generosity, co-operation, and broadmindedness, in a bad home it imbibes selfishness, disregard of others, meanness, rivalry, and narrowmindedness. The Catholic leaders are right in saying "Give us the child until he is seven and you may have

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\* *Human Relations*, p. 26.

him for the rest of his life." It is during childhood that habits are formed and dispositions and attitudes are shaped. Such being the case, the value of a good home for citizenship is incalculable. This means, among other things, educated fathers and mothers who have a devotion to the State and a keen desire to serve. Mrs. Bosanquet describes the family as "the great discipline through which each generation learns anew the lesson of citizenship."

Equally important with the home is the school. We have already spoken of the urgent necessity of literacy; but literacy alone cannot produce good citizens. We need a system of education which will train pupils for social living, encourage co-operative methods and group ideals, mould character, and instil a legitimate national pride and national spirit. Eldridge remarks, "competent citizenship is based on at least an elementary knowledge of history, sociology, economics, and political science, especially those phases thereof that illumine the problems of the particular citizen."\* It is a fatal mistake for the teacher to assume that his task is simply to teach the science of citizenship and that the part of the pupil is to accept and practice what he teaches. Citizenship is a science which both the teachers and the pupil should learn together and an art which both should live together. Only a public-spirited teacher can teach citizenship effectively, and he alone has a moral right to teach it. "The school must educate for citizenship as well as for occupations and professions."† "A course in citizenship, including a description and analysis of all civic relationships, local and world-wide, should be a part of every school curriculum."‡

Occupational groups, too, can become an effective instrument in training for citizenship. The common tendency is for them to cultivate an exclusive attitude and fond for

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\* *The New Citizenship*, p. 133.

† C. C. Taylor and B. F. Brown : *Human Relations* p. 27.

‡ *Op. cit.*, p. 33.

themselves. The good citizen should remember that while earning a living is a sacred duty of every person, it is not right for him to allow his economic interests to crowd out his political functions. "The ultimate function of all industry is social service."\* Industrial values should not be allowed to kill "the values of those human relations which should exist in homes, churches, schools, neighbourhoods, and communities."†

Caste-groups, when properly liberalised by, and informed with, a spirit of patriotism and a love of service, can become agents in the promotion of civic virtues. For good or evil, the caste system is with us. There do not appear to be many signs of its breaking down completely in the near future. Already a new spirit has been breathed into it, which may give it a new lease of life and make it a power for good. The caste organisation has a hold upon its members, which few other social organisations have on theirs. Therefore, it is reasonable to think that if the spirit of exclusiveness and pride is removed from caste, it may become a logical and effective unit in the training for citizenship. There may very well be healthy rivalry and emulation between the different caste groups in their eagerness to improve their social, economic, and educational conditions and in their devotion and service to the nation and the State.

The press, the platform, the church, and neighbourhood organisations of various kinds also have a very important part to play in inculcating civic virtues. They should emphasise such ideals as order, progress, service, freedom, justice, co-operation, national unity, and international peace and international responsibility. The press which indulges in one extreme point of view or in half-truths, the orator who works on people's emotions for his own advantage or for

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\* Op. cit. p. 41.

† op. cit. p. 48.

the advantage of a small group, the church or religious organisation which fosters contempt or hatred of those outside its own walls, and the neighbourhood organisation which loses the wood in the trees and cultivates a parochial outlook --all these are guilty of doing a distinct disservice to the cause of citizenship.

*Conclusion*—Citizenship is not a mere political function. It is a social and moral function as well. The good citizen should be a good man in every walk and activity of life. For this purpose all his human relationships should be of the highest order. In the words of E. M. White, the three essential qualities of good citizenship are commonsense, knowledge, and devotion. To use the language of the same writer again, the citizen should take a wide survey. He should have a historical basis. He must connect the past with the present and the future. With his feet in the road of order, he must turn his face towards progress. All preparation for citizenship is useless unless citizenship is practised. As Lahiri and Banerjea say, "Good citizenship is in the nature of a trust for the community." The good and faithful citizen should take an oath to himself, very much like the Ephebic oath taken by Athenian young men in the beginning of the second year of their military training : "I will not bring dishonour upon my arms, and I will not desert the comrade by my side. I will defend the sacred places and all things holy, whether alone or with the help of many. I will leave my native land not less but greater and better than I found it I will render intelligent obedience to my superiors, and will obey the established ordinances and whatsoever other laws the people shall harmoniously establish. I will not suffer the laws to be set aside or disobeyed, but will defend them alone or with the help of all. And I will respect the memory of the fathers. The gods be my witness."‡

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\* Quoted by Lahiri and Banerjea: Op. cit., p. 126.

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